(1)

Last page of docket

SHDKT PROCEEDINGS AND ORDERS DATE: [01/28/92]

CASE NBR: [91105852] CFX STATUS: [DECIDED]
SHORT TITLE: [Martin, James L.]
VERSUS [Knox, Julie, et al.] DATE DOCKETED: [091891]

	DATE	NOTE	PROCEEDINGS & ORDERS
1	Sep 18 1991	D	Petition for writ of certiorari and motion for leave to proceed in forma pauperis filed.
3	Oct 24 1991		DISTRIBUTED. November 8, 1991
5	Nov 12 1991		REDISTRIBUTED. November 15, 1991
12	Nov 12 1991		Supplemental brief of petitioner James L. Martin filed.
9	Nov 21 1991		REDISTRIBUTED. November 27, 1991
11	Dec 2 1991		Petition DENIED. Opinion by Justice Stevens respecting the denial of certiorari which whom Justice Blackmun joins. (Detached opinion.)
			**********
13	Dec 12 1991	P	Petition for rehearing filed.
15	Jan 15 1992		DISTRIBUTED. February 21, 1992

ORIGINAL

91-5852

SUPREME COURT OF THE UNITED STATES

JAMES L. MARTIN, petitioner : No. _____
v.
HON. CLARKSON S. FISHER, respondent

Petitioner's **IFP Motion and proposed Order**

I, James L. Martin, move for leave to proceed *in forma pauperis* and certify the following statements to be true based on my personal knowledge, and I make them under penalties for perjury pursuant to 28 USC Sec. 1746 this 14th day of September 1991:

In an Order issued on 9-6-91, the Third Circuit granted my IFP Motion. I have been granted leave to proceed IFP in related cases and in predecessor cases. My Verified Statement showing my financial condition is also attached as an exhibit. The issues presented are covered in the accompanying Petition for a Writ of Certiorari.

WHEREFORE, I request that this IFP Motion be granted.

DATED: September 14, 1991 BY: James L. Martin
James L. Martin, 912 McCabe Ave.; Wilmington, DE 19802 (302) 652-3957

ORDER

Now, this day of 1991, this IFP Motion is granted.

_____

8 pp

AFFIDAVIT

I, James L. Martin, first duly sworn according to law, depose and say that I am the petitioner in the above-entitled case; that in support of my motion to proceed without being required to pre-pay fees, costs or give security therefore, I state that because of my poverty I am unable to pay the costs of said case or to give security therefor; and that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the costs of proceeding in this Court are true.

1. Are you presently employed? Yes.
   a. If the answer is yes, state the amount of your salary or wages permonth and give the name and address of your employer. $295/mo., ave. net. Self-employed.
   b. If the answer is no, state the date of your last employment and the amoutn of the salary and wages per month which you received.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends or other source? Yes.
   a. If the answer is yes, describe each source of income and state the amount received from each during the past twelve months. $3514 net from self-employment.
3. Do you own any cash or checking or savings account? Yes.
   a. If the answer is yes, state the total value of the items owned. $415
4. Do you own any real estate, stocks, bonds, notes , automobiles or other valuable property (excluding ordinary household furnishings and clothing)? Yes.
   a. If the answer is yes, describe the property and state its approximate value. '78 fully depreciated Toyota pick-up truck from father's estate.
5. List the persons who are dependent upon you for support and state your relationship to those persons. None.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury, pursuant to 28 USC § 1746 this 14th day of September 1991.

/-/ James L. Martin

Subscribed and Sworn to Before
me this _____ day of _____, 19__.

_____
NOTARY PUBLIC

SUPREME COURT OF THE UNITED STATES

JAMES L. MARTIN, petitioner : No. 91-_____

v.

HON. CLARKSON S. FISHER,
respondent

Certificate of Service

I, James L. Martin, hereby certify that I served a true and correct copy of the Petitioner's **IFP Motion and proposed Order** by first-class, postage-prepaid mail this 16th day of September 1991 on counsel for the respondents who appeared and on respondent Judge Clarkson Fisher, addressed as follows:

Irene Dowdy, Asst. US Atty; US DOJ; 402 E. State St.; Rm 502; Trenton, NJ 08608;

Hon. Clarkson S. Fisher: US District Court, NJ; Rm 235 US Courthouse; 402 E. State St.; Trenton, NJ 08605

BY: James L. Martin

James L. Martin; 912 McCabe Ave.; Wilmington, DE 19802; (302) 652-3957

SUPREME COURT OF THE UNITED STATES

JAMES L. MARTIN, petitioner : No. _____

v.

HON. CLARKSON S. FISHER, respondent

Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

September 14, 1991

BY: James L. Martin, 912 McCabe Ave.; Wilmington, DE 19802
(302) 652-3957

QUESTIONS PRESENTED FOR REVIEW

A. Is an affidavit of poverty sufficient if it states that, because of a party's poverty, he cannot pay the costs of filing?

B. May a circuit court of appeals conduct business despite lack of a quorum?

C. IS RECUSAL AND DISQUALIFICATION APPROPRIATE WHERE A JUDGE'S IMPARTIALITY MIGHT REASONABLY BE QUESTIONED, AS WHERE HE ISSUES OPINIONS WHICH CLEARLY CONTRADICT (1) STIPULATIONS REACHED DIRECTLY BETWEEN THE ADVERSARY PARTIES, (2) PRIOR ORDERS AND OPINIONS FROM JUDGES IN THE SAME MATTER, (3) WELL-ESTABLISHED PRINCIPLES OF STATUTORY AND OF CONSTITUTIONAL LAW, TO CULMINATE IN HIS IGNORING A MOTION FOR RECUSAL?

D. IS A MANDAMUS PETITION AN APPROPRIATE METHOD TO COMPEL A RECUSAL? [Inter-circuit conflict, with court below deciding that it is not, and that a litigant who attempts to compel a recusal through a mandamus petition is subject to sanctions, whereas the other circuits have consistently ruled that a mandamus petition is appropriate and, in some instances, the only method to compel a recusal.]

CONTENTS

AUTHORITIES

Federal Statutes

Federal Cases

Other Authorities

OPINIONS AND ORDERS IN THE COURT BELOW

In an Order dated 9-6-91, at Ex-1a, the Third Circuit granted my IFP motion but denied my petition for a writ of mandamus directed against the respondent judge. The Order also contained a denial of my Motion to Recuse Third Circuit Judges Mansmann and Nygaard.

STATEMENT OF THIS COURT'S JURISDICTION

This Court's jurisdiction for review is at 28 USC Sec. 1254(1). The judgment sought to be reviewed, at Ex-1a, was entered on 9-6-91. I did not seek rehearing in the Third Circuit, for it has never been productive and is not likely to be fruitful in the future.

AUTHORITIES RELIED UPON

28 USC Sec. 47. Disqualification of trial judge to hear appeal

"No judge shall hear or determine an appeal from the decision of a case or issue tried by him."

28 USC Sec. 144. Bias or prejudice of judge.

"Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding."

28 USC Sec. 455 DISQUALIFICATION OF JUSTICE, JUDGE, . . .

"(a) Any judge . . . shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

"(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding."

28 USC Sec. 1651. Writs.

"(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to usages and principles of law."

28 USC Sec. 1915(a). Proceedings *in forma pauperis*

"(a) Any court of the United States may authorize the commencement . . . of any suit . . . , without prepayment of fees and costs or security therefor, by a person who makes an affidavit that he is unable to pay such costs or give security therefor."

STATEMENT OF CASE

A. Basis for federal jurisdiction in the Court below: 28 USC Sec. 1651.

B. Statement of Case: Although I was sworn in to the NJ Bar, both federal and state, in April 1984, the licensing authorities, at the behest of racketeers in cases where I represented plaintiffs in DE, began to purport that my law licenses were "mistakes," so that these intangible property interests could be taken without notice, hearing, or cause. The Bar Examiners then impounded my file for about eight (8) years, and I resorted to the NJ Federal District Court for injunctive remedies and money damages.

In an Opinion dated 10-5-88, respondent Judge Fisher, with the NJ Federal District Court, wrote: "In fact, it is becoming increasingly clear that a good part of the responsibility for the delays in determining plaintiff's application for certification must be laid at plaintiff's door." Op., p. 6. [The entire Petition for a Writ of Mandamus filed in the court below appears here at Ex-6a to 37a.] The transcript of the 6-6-88 hearing before the NJ Committee on Character, which is affiliated with the NJ Board of Bar Examiners, reads:

MR. BARON [Chairman of NJ Committee]: "And the only thing that I can say to you is, as long as those [federal] proceedings continue, unless some Court

directs us, otherwise, I am not prepared to move forward and to complete your application, and I understand that you object to us doing that.
MR. MARTIN: "Absolutely.
MR. BARON: "So I am not going to do that.
MR. MARTIN: "I don't object to the Committee moving forward, I object to the defendants in a related lawsuit serving as disinterested judges. That's preposterous.
MR. BARON: "I understand your complaint . . ."

Lines 4 - 19, p. 33.

At another hearing, on 4-5-90, Chairman Baron again admitted that the delay was not attributable to me, but rather to the Committee, in these terms:

MR. BARON: "Someone at the state level tried to coordinate it [second psychiatric evaluation], and there was a problem because you were going away for a period of time and you tried to reach Dr. Schwartz [psychiatrist appointed by Committee]. As I recall from what you told us before he was not available. I understand all of that.

"My perception of all of that, Mr. Martin, I say this with due respect to you, is that if it didn't come about, some greater effort should have been made *not on your part, but on the part of the Committee* to bring it about [emphasis added].

MR. MARTIN: "I did what I could."

TRN of 4-5-90 hearing, p. 92, lines 7 - 18.

At the same hearing before the NJ Committee on Character, the following occurred:

MR. MARTIN: ". . . When this came from New Jersey, I just assumed I had been accepted.
MR. BARON: "You were never sworn in; is that correct?
MR. MARTIN: "I was sworn in. I took the oath and I was sworn in. When I got the license with the seal on it, I thought that was the end of it."

TRN of 4-5-90 proceeding, p. 10, lines 16-25. A neutral judge would immediately see the need for forceful intervention in a matter where a state Committee, without even colorable jurisdiction, interposes itself for so many

years under the guise of investigating an issue it is responsible for fabricating.

At the same 4-5-90 hearing before the Committee, I informed the members that I brought tape recordings of exactly what occurred in 1975, and here is what ensued:

MR. LARIO: "Are these conversations between you and the various individuals, firsthand conversations, or are you recapping it?
MR. MARTIN: "No, the firsthand, the actual thing. Even the conversation with the psychiatrist [John Walmer] inside the institution.
MR. BARON: "I will give you my response to that. In weighing your certification, I don't care what your mental state was in 1975, but I'm very much concerned with what your mental state is today."

TRN., p. 63, lines 11-21. Baron went on the say that he did not want to hear what really occurred in 1975; he wanted current medical evidence that I was fit to practice law:

MR. BARON: "Since we last met in 1985, we met in 1988 as well. Let me direct your attention to 1985. Have you received any psychiatric treatment from that date until the present?
MR. MARTIN: "No.
MR. BARON: "Have you been confined in any way for psychiatric treatment?
MR. MARTIN: "No.
MR. BARON: "Have you had any medical treatment for any condition that you did not disclose to us previously during any of your years?
MR. MARTIN: "I will answer that, but it is objectionable. I did go to the doctor for Fulvicin, which is a kind of medicine used to treat a fungal infection, athletes' foot, trapped under my toenail.
MR. BARON: "All right. I'm not concerned about something like that. I mean a serious health condition as opposed to whether you might have had a fungicide or whether you might have had an ear infection or cold. I'm asking about any other type of medical treatment that might have been serious.

TRN., p. 70, lines 3 - 25.

Regrettably, the Committee's Chairman, and both of the remaining two members, heartily endorsed every word he said and do not seem to

understand how powerful a medicine Fulvicin is. Moreover, Baron believes that an ear infection is not a serious medical disorder. A disinterested federal judge would have long ago seen the wisdom of enjoining an inquiry into an admitted attorney's remote medical history absent evidence that he reneged on professional obligations to clients or otherwise violated well-established ethical standards.

On 7-5-89, my physician issued a statement to Dr. Copeland which says, "I have no reason to believe James Martin is mentally or neuropsychiatrically impaired and have been his doctor for the past five (5) years." When I introduced that document into evidence at the 4-5-90 proceeding, here is what occurred:

MR. BARON: "This is what I think I have seen. Is this the sports physician that you mentioned earlier?
MR. MARTIN: "Yes.
MR. BARON: "This is not a psychiatrist?
MR. MARTIN: "No, it is my medical doctor.
MR. BARON: "Nor a psychologist. Again, I want to see someone trained in psychiatry or psychology to tell me about your condition. By the way--
DR. COPELAND: "What condition?
MR. BARON: "Well, that is an interesting question, doctor. His present psychiatric condition.
DR. COPELAND: "Have you established that he has a psychiatric condition at this time?
MR. BARON: "I'm not--no. What I have established it that there is a doubt in my mind.
DR. COPELAND: "From what evidence?
MR. BARON: "Excuse me. I dont' have to respond to you--
DR. COPELAND: "I'm just asking."
MR. BARON: "--unless you are representing Mr. Martin today.
MR. MARTIN: "No, he's not representing me, but I think it's important--
MR. BARON [to Martin]: "I will answer you, because you have the right to ask the same question.
MR. MARTIN: "I have been trying to get to the same thing. I have talked with other people, too.

MR. BARON: "I have looked at the following items that cause me concern. I have looked at and I have heard testimony about the question of the visitation of the two institutions [over 15 years ago]. I have listened to your explanation of it and I have not frankly, in any way, made a determination as to why it happened or whether it should have happened.
DR. COPELAND: "Is that relevant?"

TRN., p. 102, lines 13 - 25, con't on p. 103, lines 1 - 25.

Although the State argued "a final decision by the Committee on Character will be issued shortly" in a recent brief filed with the Third Circuit, no end to the proceedings is in sight, especially if we do not get a neutral judge on the federal trial court. Consideration must also be given to what incentive, if any, I would have to be "re-admitted" to the NJ Bar, in view of that fact that I was admitted, but never disbarred. What incentive would I have to be "re-admitted," only to learn, perhaps after working hard on contingent-fee cases for plaintiffs against politically active defendant-racketeers, that these Committee members had made another "mistake," so that I should not have been "re-admitted" after all? NJ District Judge Gerry was right; the claims for money damages should proceed regardless of the outcome, if any, of the fiction of "re-certification."

In his Opinion dated 10-5-88, Judge Fisher wrote, "Plaintiff must be cognizant of the fact that each time he applies to the federal court for relief, all proceedings before the state bar are suspended." Op., p. 7. Of course, if that were actually correct, there would not be any ongoing proceedings before the NJ Committee now, in light of the ongoing federal litigation at both the trial as well as at the appellate levels.

The fact of Judge Fisher's conclusive bias in favor of the State of NJ cannot be questioned. For the first time in the history of this nation, an attorney has been deemed a non-attorney without notice, hearing, or lawful cause under the fiction of a "void *ab initio*" doctrine, whose province

previously had been primarily restricted to family law, where it reflected the influence of religious authorities in marriage and in divorce. The transcripts show the Committee's Chairman specifically admitting that, ". . . if it [second evaluation] didn't come about, some greater effort should have been made not on your part, but on the part of the Committee to bring it about." The documents previously submitted in this case consistently bear out the same admission: I have not caused the delays. To the contrary, I specifically and uncategorically objected to their dilatory tactics.

The evidence in support of this matter rivals the Motion to Recuse simultaneously directed against NJ Federal Magistrate Wolfson, who reached a foreordained decision through verified *ex parte* communications, prior to receipt of any opposition from the State.

The adversary parties to the underlying case reached an agreement that I had nothing to do with the prolonged delay, which now exceeds seven (7) years. Nonetheless, in spite of all the evidence, Judge Fisher dismissed the case several times, or affirmed Magistrate Wolfson's dismissal, and alleged that I was responsible for the delays.

In an Order dated 9-19-90, Judge Fisher denied my Motion for Recusal and Disqualification. He claims that "[t]he continuous resort to federal court had resulted in the delay of the character committee's determination." However, if that were accurate, the committee could still not move forward, because resort is still being made to the same federal court. Moreover, the committee claims it never made any determination, even to this day.

Judge Fisher notes,
"Litigants ought not to face a judge where there is a reasonable question of impartiality, but they are not entitled to judges of their own choice."

I do not know enough about the judiciary in NJ, or even in the other states, to select a judge of my choice, for I do not know them. I therefore must rely on what I read in opinions and publications, since I am not part of the political landscape anywhere, and am not requesting any particular judge as a successor.

RELATED CASES AND PROCEEDINGS

Martin v. ETS, Inc., C 3909-79,179 NJ Super. 317 (1981)

Martin v. PA Real Estate Commission, 9 C.D. 1983

Martin v. PA State Real Estate Commission, et. al., 85-2349 ED

Martin v. Mrvos and Sinibaldi, 3rd Cir. 88-5005, IN RE: James Lee Martin, 87-6622, Man./Proh. den., 108 S. Ct. 1756 (1988), reh. den., 108 S. Ct. 2889 (1988) reh. den., 6-27-88.

Martin v. PA State Real Estate Commission, et. al., 89-5271, cert. den., 110 S. Ct. 220 (1989) [Justice Brennan took no part in the consideration or decision of this petition], reh. den., 11-27-89, at 110 S. Ct. 532 (1989)

Martin v. PA State Real Estate Commission, et. al., 90-6914, cert. den.

Martin v. Sampie, et. al., 81-1114, filed on 9-25-81, Middle Dist. PA, cert. den., 459 US 850, reh. den., 459 US 1024 (1982)

IN RE: APPEAL OF JAMES L. MARTIN from PennDOT, Bureau of Traffic Safety Operations; Civil Action-Law, Trust Book 47, p. 30, Lancaster County Court of Common Pleas, PA (2 cases).

IN RE: James Lee Martin, 87-278, DC Court of App., den., reh. *en banc* den., cert. pet. pending here at No. 91-5476.

Martin v. DC Court of App., et. al., 89-2789 (TPJ), motions for summary judgment pending against defendants.

Martin v. PA Board of Law Examiners, 143 E. D. PA Sup. 84, cert. den., 471 US 1022, reh. den., 471 US 1120 (1985)

Martin v. PA Board of Law Examiners, et. al., 86-1363, E. Dist. PA., 3rd Cir. app. at 86-1719, consolidated with DLS, et. al., 85-53 (JJF), app. to 3rd Cir. at 88-3428. Both app. dis, w/o prejudice for lack of juris. on 3-24-87, with sua sponte amendment on 4-22-87 to specify that dismissal related exclusively to DLS at 85-53. In interim, I wrote to Judge Huyett to request that the matter be finally resolved, but he refused, so I app. to 3rd Cir. at 87-1440. My app. was dismissed as "frivolous," but the recusal and disqualification on 12-7-87 rendered it rather dubious. Pet. for Writ of Cert. filed on 12-17-87 at 87-6072, cert. den., 2-22-88; reh. den., 3-28-88; supplemental brief was returned. Rule 60(b) Motion filed in E. Dist. of PA on 7-16-88. Huyett denied it on 8-15-88. [Motion for Reopen and to Certify for Interlocutory Appeal.]

Martin v. Supreme Court of PA, et. al., app. to 3rd Cir. at 89-1088, 877 F. 2d 56,

cert. den., 89-5211, 110 S. Ct. 213 (1989), reh. den., 89-5211, 11-13-89, 110 US 421 (1989)

2nd time, cert. den., 89-7118, on 5-29-90, reh. den., 89-7118, on 6-28-90;

3rd time, cert. pending, US, No. 91-5331.

IN RE: James Lee Martin, Misc. Dkt. 89-0207, E. Dist. of PA, Pet. for Writ of Man./Proh. against Kunz; app. to 3rd Cir. at 89-1618;

pet. for Man./Proh. in US on 1-24-90 at 89-6551, man./proh. den., 3-19-90, reh. den., 5-14-90,

pet. for cert. in US on 3-2-90 at 89-6839, cert. den., 4-30-89, reh. den., 6-11-90.

IN RE: Application of James Lee Martin, No. 17,835-17, NJ Commitee on Character, den. after I was sworn in as an attorney before the NJ Supreme

Court on 4-2-84; app. to NJ Supreme Court, den., cert. pet. pending, US, No. 91-5401.

Martin v. Townsend, et. al., 86-1352, NJ DC, 87-5270, 826 F. 2d 1056, cert. den.,108 S. Ct. 191 (1987)

Martin v. Townsend, et. al., 88-7435, 875 F. 2d 311, cert. den.,110 S. Ct. 212 (1989), reh. den., 110 S. Ct. 524 (1989)

IN RE: James L. Martin, US, Pet. for Writ of Mandamus rec'd on 3-22-90 but returned to me on 3-23-90. I resubmitted it as a Writ of Cert. on 3-26-90, but it was returned to me again on 3-29-90. I resubmitted it on 3-30-90, but it was returned to me again on 4-4-90, without filing.

Martin v. Townsend, et. al., Mot to Reinstate denied again, app. to 3rd Cir. 90-5417, app. aff'd., reh. *en banc* den., cert. den., 90-6230, --US--,1-7-91, reh. den.

Martin, et. al., v. Townsend, et. al., (CSF), 90-2616, NJ Dist., aff'd. 3rd Cir. (w/o quorum), pet. for reh. *en banc* den., cert. pet. pending, US, No. 91-5332.

Martin v. Mrvos, No. 91-8035, 3rd Cir., man. den., pet. for writ of cert. pending, US, at No. 91-5244.

Martin v. Knox, et. al., No. 91-1145 (CSF), D. NJ, app. to 3rd Cir., No. 91-5512, pending.

Martin v. Francis, Supreme Court of NJ, et. al., No. 91-3206 (CSF), pending.

IN RE Application of James M. for Adm. to MD Bar, Misc. No. 3 - Sept. Term 1988, app. to US, 88-5084, appeal dis. for want of juris., reformed as cert. pet., cert. den., 10-3-88, reh. den., 11-7-88.

Martin v. MD Court of Appeals, et. al., 88-1999 DC MD, app. to 4th Cir., 88-1749 870 F. 2d 655; 88-7103, cert. den.,109 S. Ct. 3195, , reh. den., 110 S.

Ct. 14 (1989), Motion for Stay rec'd on 7-3-89 is returned 7-7-89; stay motion resub. on 7-31-89 is returned again on 7-19-89; resubmitted stay motion is returned for 3rd time on 8-11-89.

IN RE: Application of James Lee Martin for Adm to VA Bar. Passing score deemed failure.

Martin v. VA Board of Bar Examiners, et. al., 88-0269-R, app. to 4th Cir. at 88-1752, consolidated with MD Court of Appeals for disposition in 4th Cir. 870 F. 2d 655; pet. for writ of cert, US, 88-7103, cert. den., 109 S. Ct. 3195, reh. den., 110 S. Ct. 14 (1989), Motion for Stay rec'd on 7-3-89 is returned 7-7-89; stay motion resub. on 7-31-89 is returned again on 7-19-89; resubmitted stay motion is returned for 3rd time on 8-11-89.

IN RE Application of James Lee Martin to the DE Bar;

(1) app. filed with DE Sup. on 4-19-89, 190, 1989; IN RE: James Lee Martin, 88-7221, Man./Proh. den., 110 S. Ct. 222 (1989), reh. den., 110 S. Ct. 420 (1989);

(2) app. again filed with DE Sup. on 7-2-90, app. dismissed 10-22-90, reh. *en banc* den., 11-5-90, cert. den. at No. 90-6229,--US--.

Martin v. Sparks, et. al., 90-235, D. DE, dis, app. to 3rd Cir. pending at No. 91-3596. [All DE federal judges ineligible to serve in this case, so they unilaterally appointed PA Judge Daniel Huyett on account of his predictable hostility towards me, deeply entrenched for over a decade.]

Martin v. DLS, et. al., 85-53 (JJF), 625 F. Supp. 1288, 884 F. 2d 1384, cert. den., 110 S. Ct. 411 (1989), reh. den., 110 S. Ct. 766 (1990)

Martin v. DLS, et. al., 88-768 DC Dist, app. to DC Court of App. for DC Cir. at 89-7024, 89-5210 , cert. den., 110 S. Ct. 212 (1989), reh. den., 110 S. Ct. 421 (1990).

Martin v. DLS, et. al., 88-396-A, VA Dist, trans. to DE Dist. at 88-298 (JJF), dis., reh. den., app. to 3rd Cir., aff'd, cert. pet. pending, US, No. 91-5307.

IN RE: James L. Martin, 88-5988,--US--, pet. for man./proh. den. on 2-21-89, motion for leave to file reh. den., 11-6-89.

Martin v. Widener University School of Law [formerly DLS], et. al., No. 91C-03-255, DE Super., pending.

Martin v. Widener University School of Law [formerly DLS], et. al., No. 91C-04-293, DE Super., pending

Martin v. Widener University School of Law [formerly DLS], et. al., No. 12192, DE Chancery., pending.

Martin v. DLS, et. al., 88-3420, E. Dist. of PA., dis., app. to 3rd Cir., No. 91-1761, pending.

Martin v. Shank, et. al., 86-2205, Dist. of MD.

(1) app. to 4th Cir. at 87-2039,

(2) app. to 4th Cir. at 87-2040,

(3) app. to 4th Cir. at 87-2100; pet. for writ of cert., 89-7126, cert. den., 5-29-90, reh. den., 6-28-90

(4) app. to 4th Cir. at 87-2162, IN RE: James Lee Martin, 87-6616, Man./Proh. den., on 5-16-88,108 S. Ct. 1757 (1988), reh. den. on 6-27-88, 108 S. Ct. 2888 (1988).

(5) app. to 4th Cir. at 87-2177, 838 F. 2d 1210;

(a) IN RE: James Lee Martin, 87-6790, Man./Proh. den. on 6-6-88, 108 S. Ct. 2045 (1988), reh. den., on 6-30-88,108 S. Ct. 2921 (1988)

(b) Martin v. Shank, et. al., 87-6903, cert. den. 6-27-88, reh. den., on 9-15-88

Martin v. Shank, et. al., 86-1748, DC, app. to DC Cir., 87-7008, pet. for writ of cert. den. on 10-3-88 at 87-7005; reh. den., 11-7-88 at 87-7005

Martin v. Shank, et. al., DC Cir. 87-7008, pet. for writ of cert. den. on 2-21-89 at 88-6145, reh. den. on 3-27-89 at 88-6145 [re costs for appendix and briefs]

In the Matter of James Lee Martin, Case Ref. No. 03852042, US Dept. of Education, app. to DC Dist. 88-1788, app. to DC Cir., pet. for cert. 89-7669, den., 10-1-90, reh. den.

Martin v. US Dept. of Education, No. 90-2492(TPJ), DC Dist., pending.

Martin v. Wilson, PA State Police, et. al., 88-2300 (ED Pa.), pending.

Martin v. Farnan, 89-8008, 3rd Cir.; IN RE: James Lee Martin, 89-6594, man./proh. den., 3-19-90; reh. den., 4-30-90.

Martin v. Farnan, 90-8035, 3rd Cir.;

(1) 89-7446, cert. den., 6-28-90, reh. den.

(2) 89-7700, cert. den., 10-1-90, reh. den.

Martin v. Farnan, 89-8088, 3rd Cir.; Martin v. Farnan, 89-7817,--US-- pet. for writ of cert. den., 10-1-90, reh. den.

Martin v. Farnan, 90-8102, 3rd Cir., reh. *en banc* den., cert. den., 90-7012, on 3-25-91, reh. den., 4-29-91.

Martin v. Farnan, 90-8043, 3rd Cir., pet. for writ of mandamus den., pet. for writ of cert. pending, US, No. 91-5246, captioned Martin v. Smith.

Martin and Richards v. Farnan, 91-8058, 3rd Cir., pet. for writ of mandamus pending.

Martin v. Huyett, 89-8011, 3rd Cir.; IN RE: James Lee Martin, 88-7157, Man./Proh. den., 109 S. Ct. 3231 (1988), reh. den., 110 S. Ct. 15 (1989)

Martin v. Huyett, 89-8076, 3rd Cir.;

(1) James Lee Martin v. US Court of Appeals for the 3rd Cir., 89-6098, cert. den., 1-16-90, reh. den., 3-5-90.

(2) Martin v. Huyett, 89-7449, cert. den., 6-28-90, reh. den., 8-13-90;

Martin v. Huyett, 90-8101, 3rd Cir., man. den., reh. *en banc* den., cert. den., at 90-7027, reh. den., 5-13-91.

Martin v. Huyett, 91-8052, 3rd Cir., man. den., cert. pending, US, at 91-5583.

Martin v. Fisher, No. 90-8103, 3rd Cir., man. den., reh. *en banc* den., cert. den., No. 90-7083, US, reh. den.

IN RE: James L. Martin, No. 4, 1989, Leb. Orphans Ct., app. to PA Super., 118 HBG 89, pet. for allow. of app. to PA Sup., 233 M.D. Alloc. Dkt. 89, cert. den. at 89-7119 on 5-29-90 in Martin v. PA Supreme Court, reh. den., 6-28-90.

Martin v. Walmer, et. al., 90-2752 (E. Dist. of PA), dis. on 9-26-90, recon. den. (Huyett ignored unopposed Motion to Recuse), app. to 3rd Cir. den. at No. 91-1010, aff'd, reh. en banc den., pet. for writ of cert. pending, US, No. 91-5331.

Martin v. Smith, et. al., No. 91-75, D. DE, app. to 3rd Cir., No. 91-3384, pending.

Joyce E. Richards and James L. Martin v. Medical Center of DE, Inc., et. al., No. 90-6373,--US--, cert. den., reh. den.

Joyce E. Richards and James L. Martin v. Medical Center of DE, Inc., et. al., No. 91-148 (JJF), D. DE, pending. [Defaults have been entered in favor of plaintiffs against three defendants.]

Bucher, Martin, et. al. v. Omega Medical Center Assoc., L.P., No. 90-3461, 3rd Cir., aff., reh. *en banc* den., pet. for writ of cert. for filing in US was returned from Clerk's Office but resubmitted. It was returned the

second time. Martin was deemed ineligible to file it because he was not considered a party to the case.

Copeland, Martin, et. al. v. Omega Medical Center Assoc., L.P., No. 91-193 (JJF), D. DE, pending. [Defaults have been entered in favor of plaintiffs against all but one defendant.]

I view the "related cases" section narrowly and therefore do not include many other cases that could otherwise be considered "related."

REASONS THE WRIT SHOULD BE GRANTED

A. An IFP Motion should be granted, without reservation, if the questions presented involve legal issues arguable on their merits and therefore not frivolous. An affidavit of poverty is sufficient if it states that because of a party's poverty, he cannot pay the costs of filing.

This is the rule of Jones v. Frank, 622 F. Supp. 1119 (DC Tex 1985), 28 USC Sec. 1915, and F.R.A.P. 24(a). To his credit, respondent Judge Clarkson Fisher ruled, on 12-5-88, "An affidavit is sufficient when it states that because of a party's poverty he cannot pay the costs of a particular litigation and still provide himself and/or his dependents "with the necessities of life." Adkins v. DuPont & Co., 335 US 331, 339 (1948). A showing a complete destitution is not required. Id." See Judge Fisher's Opinion from the related case, Martin v. Townsend, et. al., 875 F. 2d 311, cert. den., 110 S. Ct. 212 (1989), reh. den., 11-27-89. Even though my IFP Motions have never been denied before this Court, the defendants in the NJ District filed an opposition to my IFP Motion. They should have been sanctioned, but they were not.

Although the Court below granted my IFP Motion this time, in ftn. 1, p. 2 of the Opinion, at Ex-3a, the Court claimed it "... will not accept misleading affidavits in the future." The supposed basis for "misleading" the Court was that the "affidavit form does not ask for 'average net income,' but rather

requires the affiant to list total income from any source." See Ex-3a. Resort to the form, at Ex-1a attached to the IFP Motion I filed here, does not require the affiant to list "total income." The question seeks "... the amount of your salary or wages per month and ... the name and address of your employer." Obviously, the underlying supposition is that the affiant, if he is employed, is working for someone other than himself. Because I am self-employed, I disclosed the average net income for one month, which is a better measure of my condition than gross income. The statute reads,

28 USC Sec. 1915(a). Proceedings *in forma pauperis*

"(a) Any court of the United States may authorize the commencement ... of any suit ..., without prepayment of fees and costs or security therefor, by a person who makes an affidavit that he is unable to pay such costs or give security therefor."

The form at issue was part of a package of materials from this Court. The IFP application form was merely a sample document designed to illustrate one method of disclosing financial condition. To satisfy the statutory standard does not require adherence to any particular form, even though I did answer all the questions on it and find it peculiar that the court below should create an issue about my financial condition or eligibility for the IFP filing fee waiver in view of the number of times my petitions have been filed in this Court under the waiver provision. Law of the case doctrine should apply at some stage.

B. A circuit court of appeals may not conduct business despite lack of a quorum.

According to Rule 2(2) of the RULES OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, "The chief judge may from time to time, with the concurrence of a *majority* of the circuit judges in regular active service, divide the court ... [emphasis added]." Rule 2(5) further provides,

"A *majority* of the number of judges authorized to constitute the court or a division thereof as provided in paragraph (3) of this rule shall constitute a quorum. If a quorum does not attend on any day appointed for holding a session of the court or a division thereof, any judge who does attend may adjourn the court or division from time to time or, in the absence of any judge, the clerk may adjourn the court or division from day to day." [Emphasis added].

Because the recusals sought, even if only some are granted, would deprive this Court of a quorum to divide the Court into a panel consisting of judges not sought to be recused, the session at issue here on 9-6-91 should have been adjourned until such time as the Third Circuit convenes a quorum of judges who are not ineligible to serve on account of their prior exposure to this matter, or issues in it, as trial judges or as appellate judges in the state system prior to promotion to the federal system, or as associates of the defendants in matters before the Court. [The Motion to Recuse and to Disqualify filed in the court below is at Ex-38a to 50a.]

For example, on 11-9-89, 3rd Cir. Judge Dolores K. Sloviter participated in an honorary function at the Widener University School of Law, formerly the Delaware Law School, along with 3rd Cir. Judge Walter Stapleton and other local judges closely associated with the School, my *alma mater* whose Dean persists with violating the Rehabilitation Act by substituting his ideas about my remote medical condition for what actually occurred and, in so doing, has interfered with my right to practice law. The admissions clerks in NJ, who have been diligently relying upon the respondent judge's support regardless of what they do, relied upon disinformation from the Law School that was cited, in 1983, as an excuse to delay my admission until 1984, when I was sworn in. The Dean, Anthony Santoro, also appeared prominently, with the judges whose service here is at issue, during the same 11-9-89 function at the School. Although Judge

Stapleton, among others, already recused themselves because of their involvement with the School in related cases, Judge Becker, who signed the Order and Opinion at issue here, needs some direction from this Court about the nature and extent of a judicial tribunal's authority if a quorum cannot be convened to assign the case in question.

If no quorum is likely in the future, then the matter should be referred to a neutral Circuit, or visiting judges from another Circuit should be invited to serve so that a quorum may be convened.

In Arnold v. Eastern Air Lines, Inc., 712 F. 2d 899 (1983), the issue was whether a recused judge should be treated as though he were part of the quorum for a vote on whether to rehear, a case *en banc*. The resolution is clear, simple, and fair:

"However, should he, or any other regular, active member of the court, recuse or disqualify himself at any time, he is *out of service* [emphasis in original] insofar as that particular case is concerned. To disqualify means to bar legally. *See* Webster's New International Dictionary, 2nd ed., p. 753. That is synonymous with lack of legal capacity, i.e., with inability to serve." Id., at 904.

The *Arnold* court also relied upon 28 USC Sec. 47 for collateral support. That statute forbids a trial judge from hearing or from determining an appeal from a decision reached by him [as a trial court judge].

As indicated in the *1985 Alumni Directory of the Delaware Law School*, "As the only law school in Delaware, the Delaware Law School [now called the "Widener University School of Law] maintains particularly close ties to the Delaware bar and judiciary." A Motion for Recusal and Disqualification, based on association with the School, should be transferred to a judge outside the Third Circuit for disposition, unless a recently appointed judge, who has no association with the School, rules on it.

The problem is not restricted to the federal system. In the state system, the nexus is at least as strong, which renders the local state judicial system unable to act. For example, Hon. Andrew D. Christie, Chief Justice of the DE Supreme Court, is regularly honored by the Delaware Law School. One example, as set forth in the School's publication *CASENOTES*, June '88 Issue:

"With the customary reading of accolades extolling his many accomplishments[,] Delaware's Chief Justice of the Supreme Court, Andrew D. Christie, was presented to President Robert J. Bruce by Board of Trustees Chairman Fitz Eugene Dixon, Jr. for conferral of the honorary degree, Doctor of Laws, at ceremonies marking the law school's thirteenth commencement, Saturday, May 21, 1988;"

Hon. Joseph T. Walsh and Hon. Randy J. Holland, Justices on the DE Supreme Court, participate in honorary and other functions at, by, and for the DE Law School.

Hon. Andrew G.T. Moore, Justice on the DE Supreme Court, is a member of the Adjunct Faculty of the Delaware Law School, which is the principal defendant in Martin v. Delaware Law School, et. al., cert. den., 110 S. Ct. 212 (1989), reh. den., 110 S. Ct. 421 (1989).

C. RECUSAL AND DISQUALIFICATION IS APPROPRIATE WHERE A JUDGE'S IMPARTIALITY MIGHT REASONABLY BE QUESTIONED, AS WHERE HE ISSUES OPINIONS WHICH CLEARLY CONTRADICT (1) STIPULATIONS REACHED DIRECTLY BETWEEN THE ADVERSARY PARTIES, (2) PRIOR ORDERS AND OPINIONS FROM JUDGES IN THE SAME MATTER, (3) WELL-ESTABLISHED PRINCIPLES OF STATUTORY AND OF CONSTITUTIONAL LAW, TO CULMINATE IN HIS IGNORING A MOTION FOR RECUSAL.

In Liljeberg v. Health Services Acquisition Corp., 108 S. Ct. 2194 (1988), this Court held that a violation of the recusal statute does not require scienter, although a judge's lack of knowledge about the disqualifying circumstances may bear on the question of an appropriate remedy. The

touchstone is whether a reasonable person, knowing the relevant facts, would expect that the judge knew of circumstances creating an appearance of partiality, notwithstanding a finding that the judge was not actually conscious of the circumstances warranting disqualification. The district court judge, who was a trustee of the same university seeking a declaration of ownership by a corporation in which the university had an active interest, violated the recusal statute even though his failure to disqualify himself was supposed to have been due to his forgetting about the university's interest when the suit came to trial.

The fact of Judge Fisher's conclusive bias in favor of the State of NJ and of the federal admissions clerks cannot be questioned. For the first time in the history of this nation, an attorney has been deemed a non-attorney without notice, hearing, or lawful cause under the fiction of a "void *ab initio*" doctrine, whose province previously had been primarily restricted to family law, where it reflected the influence of religious authorities in marriage and in divorce. The transcripts show the Committee's Chairman's specific admission that, ". . . if it [second evaluation] didn't come about, some greater effort should have been made not on your part, but on the part of the Committee to bring it about." Ex-18(a). The documents previously submitted in this case consistently bear out the same admission, which prove that I have not caused the delays. To the contrary, I specifically and uncategorically objected to their dilatory tactics. See Ex-17(a). When a judge deliberately distorts uncontested or admitted facts about basic premises in a lawsuit to make the opposite the "truth," a judge's "impartiality might reasonably be questioned."

In Aetna Life Insurance Co. v. Lavoie, 475 US 813 (1986), the Court set forth these elements to warrant not merely a recusal, but also a constitutional violation, where the judge at issue served on a state court:

"More than 30 years ago Justice Black, speaking for the Court, . . . acknowledge[d] that what degree or kind of interest is sufficient to disqualify a judge from sitting 'cannot be defined with precision.' Nonetheless, a reasonable formulation of the issue is whether the 'situation is one which would offer a possible temptation to the average . . . judge to . . . lead him not to hold the balance nice, clear, and true."

475 US at 821-822.

The recusal statute, at 28 USC Sec. 455(a), calls for recusal and disqualification under circumstances must less compelling than those *sub judice*. The evidence in support of this Motion rivals the one previously directed against Magistrate Wolfson, who reached a foreordained decision through verified *ex parte* communications, prior to receipt of any opposition from the State, but she at least issued a decision on the Motion to Recuse directed against her further involvement. See docket entries at 36a - 37a.

According to IN RE WOLF, 842 F. 2d 464 (DC Cir. 1988), mandamus was the appropriate remedy for a district court's dismissal with prejudice after the adversary parties stipulated to voluntary dismissal without prejudice. The stipulated dismissal was effective automatically and did not require judicial approval, so that the district court lacked authority to alter the stipulation and order the dismissal to be with prejudice.

Likewise, in the matter at bar, the adversary parties to the underlying case reached an agreement that I had nothing to do with the prolonged delay, which exceeded seven (7) years and will likely continue one way or another, until a neutral federal trial judge is appointed to the cases. Nonetheless, in spite of all the evidence, Judge Fisher dismissed the case

several times, or affirmed Magistrate Wolfson's dismissal, and alleged that I was responsible for the delays. (Magistrate Wolfson has not been appointed to the most recent case.)

In an Order dated 9-19-90 in a prior case, Judge Fisher denied my Motion for Recusal and Disqualification. See Ex-27(a). His reasons are in a Memorandum reproduced in relevant part at Ex-23(a) to 26(a). He claims that "[t]he continuous resort to federal court had resulted in the delay of the character committee's determination." Ex-23(a). However, if that were accurate, the committee would never have concluded their scam, because resort is still being made to the same federal court, and such efforts have been continuing since 1986.

A trial judge has not discretion to carry out any of the ploys Judge Fisher has done, including the most recent one, which was to ignore the Motion to Recuse and to Disqualify.

The court below wrote, "The petition [for a writ of mandamus] does not state how Martin v. Knox is related to Martin v. Townsend." Ex-2a. As my petition indicates, at 11a, Townsend is the Admissions Clerk for the NJ Supreme Court; Knox is the Admissions Clerk for the NJ Federal District Court. After Townsend assaulted my standing as an attorney admitted to the NJ Supreme Court, I became increasingly suspicious of the integrity of the judicial system at large and therefore preserved plenty of evidence about my NJ federal licensure in case a similar assault were attempted upon my standing in the NJ Federal Court. When that came about, characterized by Knox's participation with private racketeerdefendants in a securities case where I was representing a group of injured investors, I proceeded against Knox in the same NJ Federal Court where she has been the Admissions Clerk.

The same judge, the respondent here, avidly protected both the federal as well as the state Admissions Clerks.

The court below completely failed to understand the basic reasons mandamus has been sought. According to the Third Circuit, my Motion to Recuse Judge Fisher was denied: "Moreover, Martin has not shown that Judge Fisher's denial of the motion to recuse was incorrect." Op., at 3a. The docket entries show that, although I filed the Motion to Recuse in the trial court on 5-6-91, the respondent judge ignored it, but he nonetheless dismissed the case. See 36a. The lower Court then lingers over the cases ". . . that a judge's refusal to recuse himself is 'reviewable only after final judgment,' not on mandamus." See Ex-3a. Again, the petition is being sought to compel the errant judge to rule on the motion, and also to grant it. Obviously, if he had ruled on the Motion, rather than ignoring it, his decision could have been an issue presented on appeal. However, if no decision has been entered despite a well-supported, unopposed, and timely filed Motion to Recuse, the matter is properly raised by way of a mandamus petition, because one cannot appeal a decision from the trial court if no decision has been entered.

The court below, in attempting to recast my mandamus petition to seek "that Judge Fisher be recused in future cases Martin institutes," failed to understand the simple request I made through my mandamus petition:

". . . to compel Judge Fisher to recuse and to disqualify himself from all further involvement in the related cases, with a directive to disregard his rulings to date as void *ab initio*" Further involvement in related cases is far different from recusal in future cases neither filed nor contemplated.

I do not see much need to comment on other portions of the Opinion that excuse the respondent judge's perversion of the basic agreement between the Committee and me about their responsibility for the eight-year

delay. It is not material about whether the consensus be denominated a stipulation, admission, declaration, or something else. In the context of the facts upon which these related cases are built, the comment, "Judge Fisher's statement that Martin was responsible for the delay does not demonstrate bias" calls for forceful intervention from a superior force. If such intervention is not forthcoming, the matter could deteriorate to an even greater looting of taxpayer funds under the guise of protecting the public from a duly licensed attorney, who has been asserting and verifying claims against various scoundrels lodged in different levels within the judicial system.

The terms from Judge Collins J. Seitz's recusal Order should have been adopted here; those orders provide for his recusal "in all matters involving James Martin." See Order of 4-26-89 at Ap. No. 88-3428, and related Orders.

Any trial judge is constrained by the terms of orders from his predecessors presiding over the same issues involving the same parties. At a hearing on my Motion for Preliminary Injunction on 9-15-86 in related case Martin v. Townsend, et. al., No. 86-1352, Judge Robert Cowen asked:

> Judge Cowen: "Why, let me ask you, why shouldn't I administratively terminate this matter, with the right of either party to come back to this case, to this Court, and reopen this case, upon the resolution of the matters which are presently before the character committee?" Lines 19-23, TRN p. 10.

I indicated that failure to curb the abuses recited in 1986 would lead to the scenario which did occur, in 1989, as recited in the record of Martin v. Sparks, et. al, 90-235 (DHH), D. DE, and the cases related to it in the other states. The pattern of abuse among the related cases is not surprising in view of the identity of judges who presided over the related matters.

The hearing transcript in the Townsend case specifically called for further proceedings if my federal constitutional rights were trashed before the NJ Committee, which occurred in even more extreme ways than originally described. One example is the systematic falsification of a 156-page transcript of the 4-5-90 hearing before the NJ Committee, with its declaration that the alterations accurately described the testimony given.

Judge Cowen further comtemplated the reopening of federal proceedings in these terms:

THE COURT: "Now, look, if you claim that they are not with dispatch reviewing your application, you could come into court here and I will deal with your claim." Lines 9-11, TRN. p. 12.

In 1986, I predicted that this problem would occur, i.e., that my bar admission would be subsequently deemed a "mistake" even after I obtained recent certificates of good standing and verified my bar admission in other ways. Judge Cowen replied: "We will deal with that case when it arises." Lines 11-12, TRN., p. 13. The case arose, as I predicted. Judge Fisher claimed recently that Judge Cowen's determination was "*res judicata*" Judge Huyett's pattern, which Judge Farnan endorsed, has been virtually identical.

Judge Cowen should not be permitted to continue presiding over a case he was directly involved in during his tenure with the NJ Federal District Court, and the other recusals sought in this Circuit should be granted for the reasons set forth in my Motions. 28 USC Sec. 47 specifically enjoins an appellate judge from presiding over the same issue or case before him at the trial level.

When a judge deliberately distorts uncontested or admitted facts about basic premises in a lawsuit to make the opposite the "truth," a judge's "impartiality might reasonably be questioned."

According to 28 USC Sec. 455. **DISQUALIFICATION OF JUSTICE, JUDGE,** . . ..

(a) Any justice, judge . . . shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.

The extrajudicial communication Judges Fisher, Farnan, and Huyett once claimed to have been lacking did occur even though they involved a patently foolhardy scheme. I have adduced more than ample evidence of extrajudicial involvement, including fax messages and letters about these related matters never sent to me. For example, NJ Chief Deputy Clerk Ronald Nau, in the District Court, sent a fax message to Judge Farnan in 1989 that purported to revoke my federal bar admission in NJ without notice, hearing, or cause, under the guise that it was their mistake in 1984, when I was admitted there. Judge Farnan gave force and effect to the extrajudicial communication, which parties-defendants adverse to a group of my client-plaintiffs induced from the admissions clerks. Just three (3) months before that time, I had communicated at length with the same clerks to make sure that what did occur before, at the state level, would not happen, again, at the federal level, for I had been subjected to a similar scam at the NJ state level, where my state bar admission was declared a "mistake" when racketeers from PA called the NJ Clerk's Office to complain that I had become licensed to practice law there. Their statements contained no factual details of anything I had ever done wrong against them, however, and no notice or hearing occurred before my law licenses were taken.

D. A MANDAMUS PETITION IS AN APPROPRIATE METHOD TO COMPEL A RECUSAL, AND A LITIGANT WHO FILES A WELL-SUPPORTED MANDAMUS PETITION TO COMPEL A RECUSAL SHOULD NOT BE THREATENED WITH SANCTIONS.

The Third Circuit's Opinion reads, "Because it is clear that mandamus will not lie to direct recusal, Martin's petitions are frivolous and abusive." See Ex-5a. The lower court then denominates my Petition as "frivolous" and threatens me with sanctions, a pattern some judges followed prior to my disqualifying them in various trial courts. Other Circuit Courts of Appeals have held that a mandamus petition is appropriate to direct a recusal. For example, in Union Carbide Corp. v. Cutting Service, Inc., 782 F. 2d 710 (7th Cir. Ill. 1986), the Circuit Court of Appeals allowed a mandamus petition to review a district judge's refusal to disqualify herself in the face of a substantial challenge. There, the Court held that mandamus is the only method to correct a district judge's erroneous refusal to recuse. The shadow cast over both individual litigation and the integrity of the judicial process should be dispelled at the earliest possible time by an authoritative judgment, according to that Circuit.

Likewise, the Fourth Circuit held that a district judge's refusal to disqualify himself can be reviewed by a petition for writ of mandamus. In Re Beard, 811 F. 2d 818 (4th Cir. 1987). The Ninth Circuit likewise held in Levine v. US Dist. Court for Cent. Dist. of CA, 764 F. 2d 590, reh. den., 775 F. 2d 1054 (9th Cir. CA 1985).

The grand, imperial style of the respondent judge has been sanctioned through mandamus in the Second Circuit. In Richardson Greenshields Securities, Inc. v. Lau, 825 F. 2d 647 (2nd Cir. NY 1987), the Court of Appeals treated an attempted appeal as a request for leave to file a petition for writ of mandamus to curb abuses in the trial court, which consisted of refusing to

permit defendants to file a motion for leave to file an amended answer to assert counterclaims without a prior conference, of failing to hold a requested conference for five (5) months after its request, and of then denying the motion at issue for having been raised too late. Those abuses seem rather mild when compared with what has been documented in the case at bar.

The threat of sanctions, set forth at Ex-5a, contrasts strongly with commendations like this one from Judge Robert Cowen when he served on the NJ Federal District Court, in Martin v. PA Real Estate Commission, et. al., No. 86-167, during a hearing on 4-21-86:

> THE COURT: ". . . I mean your briefing and your argument and so forth is certainly up to snuff. As a matter of fact, I want to tell you there are a lot of lawyers that come into court here, I wish were up to your snuff.
> MR. MARTIN: "Thank you."
> TRN., pp. 26 -27.

Similar, older commendations support my clients' views about the quality of my services for them, and since these older commendations, I've improved. One such commendation, at Ex-2a in the Petition docketed here at No. 89-7446, is from the work I did as an intern working for the US DOJ in the fall semester of 1982, when the Law School's officials decided, albeit off the record and with complete disregard for their own, internal policy for hearings on such matters, that they would prevent me from practicing law, which they did by telling me that my transcript had been timely sent to the US DOJ when, in fact, they waited until the deadline for being considered for full-time, permanent work expired before sending it, so that I could not be considered, even though my supervisors wanted me to stay as an employee, rather than as an intern. (In a letter dated 4-9-90, lawyers representing the School wrote, "These letters . . . are not maintained. For the periods when

Mr. Martin was a student, these letters would have gone to Professor LaBorde. He left the law school several years ago." Resort to the letter itself shows that it went to Professor Stanmeyer.) The point is that the School destroyed significant parts of my school record after I commenced litigation, and this destruction occurred with at least the tacit approval of judges sought to be recused, who have been diligently protecting the School, and the Clerks who have endorsed and compounded that scheme, for many years.

CONCLUSION

This Petition for a Writ of Certiorari should be granted, so that the Third Circuit is compelled to curb the abuses of NJ District Judge Fisher through an Order for his recusal and disqualification from all matters involving me, including those cases where I represent clients, after all orders and opinions he may have issued to date are declared null and void. This ruling would be consistent with Judge Farnan's removal as a result of a Motion to Recuse directed against him in 1989 in Martin v. Sparks, et. al., a related case.

The Third Circuit should also be compelled to convene a quorum of arguably neutral judges after it has been reminded that the attempt to disbar me without notice, hearing, or cause, and my reaction through various mandamus petitions, do not comprise "frivolous filings."

The inter-Circuit conflict about the propriety of a mandamus petition to compel a recusal should also be resolved through granting this Petition. Therefore, I am seeking a reversal, with a remand to the Third Circuit, and with directives as requested.

DATED: September 14, 1991

Respectfully submitted,
James L. Martin

James L. Martin; 912 McCabe Ave.; Wilm., DE 19802 (302) 652-3957

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 91-8054

JAMES L. MARTIN

vs.

JULIE KNOX, ET AL.
Hon. Clarkson Fisher, nominal respondent
(Related to NJ Civ. No. 91-1145)

Present: BECKER, MANSMANN, and NYGAARD, CIRCUIT JUDGES

Submitted are:

(1) Petitioner's petition for a writ of mandamus, pursuant to Rule 21, Federal Rules of Appellate Procedure;

(2) Petitioner's motion for leave to proceed in forma pauperis; and

(3) Petitoner's motion to recuse

in the above-captioned case.

Respectfully,
Sally Mansmann
Clerk

SM/MW/clj
enc.

The foregoing for leave to proceed in forma pauperis is granted, however, the petition for writ of mandamus is denied.[1] The panel's reasons are set forth in the accompanying Memorandum Opinion.

1. Judges Mansmann and Nygaard decline to recuse.

By the Court,
Circuit Judge

Dated: SEP 6 - 1991

NOT-FOR-PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

C.A. No. 91-8054

JAMES L. MARTIN
Petitioner

v.

JULIE KNOX
Respondent

Hon. Clarkson S. Fisher, nominal respondent

(Related to D.N.J. Civ. No. 91-1145)

Before: BECKER, MANSMANN, NYGAARD, Circuit Judges.

SEP 6 - 1991

MEMORANDUM OPINION

Mr. Martin has filed a motion to proceed in forma pauperis and a petition for writ of mandamus seeking an order directing Judge Fisher to recuse himself in Martin v. Knox, N.J. Civ. No. 91-1145, and related cases and all cases related to Martin v. Townsend, N.J. Civ. No. 86-1352, aff'd, No. 88-5862 (3d Cir. April 20, 1989). The petition does not state how Martin v. Knox is related to Martin v. Townsend. We will grant the

motion to proceed in forma pauperis[1] and deny the petition for writ of mandamus.

-I

To warrant issuance of a writ of mandamus pursuant to 28 U.S.C. §1651, a petitioner must show that he has a clear and indisputable right to the writ and that there is no other adequate means to obtain the relief desired. Kerr v. United States District Court, 426 U.S. 394, 403, (1976); In re Sharon Steel, 918 F.2d 434 (3d Cir. 1990); DeMasi v. Weiss, 669 F.2d 114, 117 (3d Cir. 1982).

It is well settled that a judge's refusal to recuse himself is "reviewable only after final judgment," not on mandamus. City of Pittsburgh v. Simmons, 729 F.2d 953, 954 (3d Cir. 1984)(citing Green v. Murphy, 259 F.2d 591, 594 (3d Cir. 1958)). The docket entries attached to the petition show that Martin has filed a notice of appeal from the final order in this case.

Moreover, Martin has not shown that Judge Fisher's denial of the motion to recuse was incorrect. Martin has not attached the motion to recuse to his petition. The petition does

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[1] We note that the affidavit of poverty submitted by Mr. Martin could be considered inadequate since he lists "average net income." The affidavit form does not ask for "average net income," but rather requires the affiant to list total income from any source. A petitioner is free to supplement the affidavit with a list of expenses so that the court may determine whether the petitioner qualifies for in forma pauperis status. In this instance, we choose to overlook the deficiencies in the affidavit. Mr. Martin is warned, however, that the court will not accept misleading affidavits in the future.

little more than argue that Judge Fisher's bias is demonstrated by the fact that Judge Fisher ruled against Martin in Martin v. Townsend. It is well settled that a "judge's rulings at trial do not constitute grounds for recusal because they can be corrected by reversal on appeal." Johnson v. Trueblood, 629 F.2d 287, 291 (3d Cir. 1980), cert. denied, 450 U.S. 999 (1981). See also United States v. Gallagher, 576 F.2d 1028, 1039 (3d Cir. 1978), cert. denied, 444 U.S. 1040 (1980)("[I]ncorrect rulings do not prove that a judge is biased or prejudiced"). Martin also seeks to demonstrate that Judge Fisher is biased against him because Judge Fisher stated in 1988 that Martin was responsible for the delay in his New Jersey Bar application when the parties allegedly had stipulated that he was not responsible for any delay. Martin does not attach any such stipulation, but rather quotes a portion of a 1990 hearing on his New Jersey Bar application in which it was stated that the Committee on Character, not Martin, should have brought about a psychiatric examination of Martin. Judge Fisher's statement about Martin being responsible for delay was made in 1988. We note that the petition also contains a quote from a 1988 hearing on Martin's New Jersey Bar application that indicates the Committee would proceed as long as federal proceedings initiated by Martin continued. Judge Fisher's statement that Martin was responsible for the delay does not demonstrate bias.

Insofar as Martin requests that Judge Fisher be recused in future cases Martin institutes, the request is also without

merit. Recusal is within the discretion of the judge and is decided on a case by case basis. As discussed above, Martin has not demonstrated that Judge Fisher is biased against him.

II

This is the fourth petition for writ of mandamus Martin has filed since May 30, 1991. See C.A. Misc. Nos. 91-8052, 8043, 8035. All seek an order directing a judge to recuse himself. Moreover, Martin has filed four other mandamus actions in past years, all seeking orders directing a judge to recuse himself. C.A. Misc. Nos. 90-8101, 90-8035, 89-8088, 89-8076. Because it is clear that mandamus will not lie to direct recusal, Martin's petitions are frivolous and abusive. Accordingly, Martin is warned that future frivolous filings will subject him to sanctions, including but not limited to, monetary sanctions and an injunction against filing mandamus petitions. Martin should also take note that in forma pauperis status does not exempt a litigant from monetary sanctions for abusive filings. Lay v. Anderson, 837 F.2d 231 (5th Cir. 1988).

TO THE CLERK:

Please file the foregoing opinion.

Circuit Judge

DATE: SEP 6 - 1991

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

CA No. 91-8054

JAMES L. MARTIN, petitioner : No. 91-_____

v.

HON. CLARKSON S. FISHER, respondent _____ **PETITION FOR A WRIT OF MANDAMUS**
[See FRAP 21(a)]

I, James L. Martin, certify the following statements to be true based on my personal knowledge, and I make them under penalties for perjury pursuant to 28 USC Sec. 1746 this 29th day of July 1991:

PARTIES

1. I am domiciled in CA but am temporarily living at 912 McCabe Ave., Wilmington, DE 19802 (New Castle County).

2. Respondent Clarkson S. Fisher is a Federal District Court Judge presiding in the District of NJ.

STATEMENT OF BACKGROUND FACTS

3. In an Opinion dated 10-5-88, Judge Fisher wrote: "In fact, it is becoming increasingly clear that a good part of the responsibility for the delays in determining plaintiff's application for certification must be laid at plaintiff's door." Op., p. 6. See Martin v. Townsend, et. al., No. 86-1352 (CSF). The transcript of the 6-6-88 hearing before the defendant NJ Committee reads:

MR. BARON [Chairman of NJ Committee]: "And the only thing that I can say to you is, as long as those [federal] proceedings continue, unless some Court directs us, otherwise, I am not prepared to move forward and to complete your application, and I understand that you object to us doing that.
MR. MARTIN: "Absolutely.

MR. BARON: "So I am not going to do that.
MR. MARTIN: "I don't object to the Committee moving forward, I object to the defendants in a related lawsuit serving as disinterested judges. That's preposterous.
MR. BARON: "I understand your complaint . . ."

Ex-1(a), lines 4 - 19, p. 33.

4. At another hearing, on 4-5-90, Chairman Baron again admitted that the delay was not attributable to me, but rather to the Committee, in these terms:

MR. BARON: "Someone at the state level tried to coordinate it [second psychiatric evaluation], and there was a problem because you were going away for a period of time and you tried to reach Dr. Schwartz [psychiatrist appointed by Committee]. As I recall from what you told us before he was not available. I understand all of that.

"My perception of all of that, Mr. Martin, I say this with due respect to you, is that if it didn't come about, some greater effort should have been made *not on your part, but on the part of the Committee* to bring it about [emphasis added].

MR. MARTIN: "I did what I could."

TRN of 4-5-90 hearing, p. 92, lines 7 - 18, at Ex-2(a). (The handwritten notes on the face of the transcripts show the corrections I made based on my own records.)

5. At the same hearing before the NJ Committee on Character, the following occurred:

MR. MARTIN: ". . . When this came from New Jersey, I just assumed I had been accepted.
MR. BARON: "You were never sworn in; is that correct?
MR. MARTIN: "I was sworn in. I took the oath and I was sworn in. When I got the license with the seal on it, I thought that was the end of it."

TRN of 4-5-90 proceeding, p. 10, lines 16-25. A neutral judge would immediately see the need for forceful intervention in a matter where a state Committee, without even colorable jurisdiction, interposes itself for so many

years under the guise of investigating an issue it is exclusively responsible for fabricating.

6. At the same 4-5-90 hearing before the Committee, I informed the defendant-members that I brought tape recordings of exactly what occurred in 1975, and here is what ensued:

MR. LARIO: "Are these conversations between you and the various individuals, firsthand conversations, or are you recapping it?
MR. MARTIN: "No, the firsthand, the actual thing. Even the conversation with the psychiatrist [John Walmer] inside the institution.
MR. BARON: "I will give you my response to that. In weighing your certification, I don't care what your mental state was in 1975, but I'm very much concerned with what your mental state is today."

TRN., p. 63, lines 11-21, at Ex-3(a). Baron went on the say that he did not want to hear what really occurred in 1975; he wanted current medical evidence that I was fit to practice law:

MR. BARON: "Since we last met in 1985, we met in 1988 as well. Let me direct your attention to 1985. Have you received any psychiatric treatment from that date until the present?
MR. MARTIN: "No.
MR. BARON: "Have you been confined in any way for psychiatric treatment?
MR. MARTIN: "No.
MR. BARON: "Have you had any medical treatment for any condition that you did not disclose to us previously during any of your years?
MR. MARTIN: "I will answer that, but it is objectionable. I did go to the doctor for Fulvicin, which is a kind of medicine used to treat a fungal infection, athletes' foot, trapped under my toenail.
MR. BARON: "All right. I'm not concerned about something like that. I mean a serious health condition as opposed to whether you might have had a fungicide or whether you might have had an ear infection or cold. I'm asking about any other type of medical treatment that might have been serious.
MR. MARTIN: "I will object, ..."

TRN., p. 70, lines 3 - 25. Ex-4(a).

7. A disinterested federal judge would have long ago seen the wisdom of enjoining an inquiry into an admitted attorney's remote medical history absent evidence that he reneged on professional obligations to clients or otherwise violated well-established ethical standards.

8. On 7-5-89, my physician issued a statement to Dr. Copeland which says, "I have no reason to believe James Martin is mentally or neuropsychiatrically impaired and have been his doctor for the past five (5) years." When I introduced that document into evidence at the 4-5-90 proceeding, here is what occurred:

MR. BARON: "This is what I think I have seen. Is this the sports physician that you mentioned earlier?
MR. MARTIN: "Yes.
MR. BARON: "This is not a psychiatrist?
MR. MARTIN: "No, it is my medical doctor.
MR. BARON: "Nor a psychologist. Again, I want to see someone trained in psychiatry or psychology to tell me about your condition. By the way--
DR. COPELAND: "What condition?
MR. BARON: "Well, that is an interesting question, doctor. His present psychiatric condition.
DR. COPELAND: "Have you established that he has a psychiatric condition at this time?
MR. BARON: "I'm not--no. What I have established it that there is a doubt in my mind.
DR. COPELAND: "From what evidence?
MR. BARON: "Excuse me. I dont' have to respond to you--
DR. COPELAND: "I'm just asking."
MR. BARON: "--unless you are representing Mr. Martin today.
MR. MARTIN: "No, he's not representing me, but I think it's important--
MR. BARON [to Martin]: "I will answer you, because you have the right to ask the same question.
MR. MARTIN: "I have been trying to get to the same thing. I have talked with other people, too.
MR. BARON: "I have looked at the following items that cause me concern. I have looked at and I have heard testimony about the question of the visitation of the two institutions [over 15 years ago]. I have listened to your

explanation of it and I have not frankly, in any way, made a determination as to why it happened or whether it should have happened.
DR. COPELAND: "Is that relevant?"

TRN., p. 102, lines 13 - 25, con't on p. 103, lines 1 - 25. See Ex-5(a) - 6(a).

9. In a prior Opinion from Judge John Gerry filed in the same case on 6-14-88, Judge Gerry decided, "As an aside, we also note that certification by the state might not necessarily mean that certain of plaintiff's federal claim could not continue to be advanced." See Ex-13a, the three-page Opinion is at 12a to 14a. At a Motion hearing prior to Judge Gerry's Opinion, when Judge Cowen was presiding over the case at a Motion hearing on 9-15-86, the following occurred:

THE COURT: Now, look, if you claim that they are not with dispatch reviewing your application, you could come into court here and I will deal with your claim. TRN, p. 12, lines 9 - 11, at 15a.

I also predicted that the assault on my standing would occur even if a Certificate of Good Standing were issued and described the likely scam, outrageous as it sounded, which did come to pass as evidenced with the extensive proofs in Martin v. Townsend, et. al., No. 91-5085, 3rd Cir., and related matters. Judge Cowen replied, "We will deal with that case when it arises." TRN, p. 13, lines 11 - 12, at 16a.

The case arose, but Judge Fisher, instead of honoring the commitment from Judge Cowen, merely attempted to reverse the ruling from Judge Cowen by alleging that the claims were *res judicata*. See Letter Opinion dated 12-7-90, at Ex-17a.

10. In his Opinion dated 10-5-88, Judge Fisher wrote, "Plaintiff must be cognizant of the fact that each time he applies to the federal court for relief, all proceedings before the state bar are suspended." Op., p. 7. Of course, if that were actually correct, the NJ Committee would have been

permanently foreclosed from proceeding in light of the ongoing federal litigation at both the trial as well as at the appellate levels.

STATEMENT OF FACTS

11. The NJ state licensing authorities have been allowed to undermine the most basic constitutional and statutory safeguards, so the NJ federal licensing authorities were easy targets for a similar scam beginning in 1989, shortly after the federal licensing authorities issued me a Certificate of Good Standing, and my prediction, which Judge Cowen suggested bordered on "ridiculous," did occur. See TRN, p. 13, line 3, at 16a.

12. I proceeded against them in federal court under the *Bivens* doctrine and related claims, at No. 90-2616. The case was assigned to Judge Fisher, who enthusiastically protected them as recited at appeal no. 91-5085, which has recently been brought before the US Supreme Court by way of a Petition for a Writ of Certiorari.

13. Because Judge Fisher allowed them to allege that their acknowledgement of receipt of service of process was by "mistake," although made in writing and under penalties for perjury on a preprinted court form, I had to file anew against them, at No. 91-1145. This case was also assigned to Judge Fisher.

14. I moved for the recusal and disqualification of Judge Fisher and filed a supporting brief. The Motion was returnable on 6-3-91, and filed on 5-6-91. See Ex-18a, verified with the docket entries from the trial court at 19a - 21a. He ignored the Motion. I filed an appeal to this Court and filed my Opening Brief on 7-23-91.

15. The NJ state licensing authorities' scam worsened, and it became necessary to file against them anew as well, at No. 91-3206. The case was

assigned to Judge Fisher. Part of the pleadings show how much worse the situation has become:

81. The latest report, compiled by defendants Francis, Rand, and Selser, falsely claims, "No new evidence was introduced." I introduced the Joint Appendix in Martin v. Townsend, et. al., No. 90-2616, D. NJ, app. pending, 3rd Cir., No. 91-5085. It was introduced at the latest hearing on 3-12-91 and marked A-1. It contained one-hundred ninety-six (196) pages, nearly all new evidence, since much of it came to light since the preceding hearing. My testimony was therefore substantially different from what it had been "in prior hearings held by the Boards in New Jersey, Pennsylvania, and Maryland," when I had accepted the various state's misrepresentations to me about the status of my applications to practice law.

82. The Committee's members referred to the transcript of the 3-12-91 proceeding on p. 2 of its report, but because I did not receive a copy of the transcript, contrary to RG 304:4--"Whenever a transcript of the record is ordered by the Committee, a copy shall be furnished to the candidate"--I could not refer to the record to clarify the point I made. The transcript was not sent to me until after the deadline for filing exceptions had expired. Moreover, I did not certify the transcript or waive my right to certify.

83. Conspicuous by its absence from the last report is any authority whatsoever. No statutes, no cases, whether federal or state, and no treatises were cited. That may be on account of the deficiency of talent on the panel, or it may have something to do with the lack of any authority to support the state's misconduct.

84. The Committee's notion that I cannot distinguish "the reality from the illusionary" is not based upon any medical evidence. The Committee called no expert, or other, witness to support its views. Because none of the Committee's members are medical authorities, their interposing conclusions about "illusionary" thinking, even if they mean "illusory" thinking, must be regarded in much the same way as the third-class, political hacks' scheme from over 16 years ago--conclusions, without the substantive or the procedural safeguards that are supposed to reside at the core of the adversary system.

85. Regulation 303:4 requires a "prompt" determination if the members decide "that the candidate is not fit to practice law." Defendants have been interfering with my law licenses for about eight (8) years.

86. In prior procedings, the state claimed I "never received his license to practice law in the State of New Jersey, ..." I was admitted after being sworn in on 4-2-84. At a hearing before the NJ Committee on Character on 4-5-90, the following occurred:

MR. MARTIN: ". . . When this came from New Jersey, I just assumed I had been accepted.

MR. BARON [Chairman of NJ Committee]: "You were never sworn in; is that correct?

MR. MARTIN: "I was sworn in. I took the oath and I was sworn in. When I got the license with the seal on it, I thought that was the end of it." TRN of 4-5-90 proceeding, p. 10, lines 16-25. It should be self-evident that the Board of Law Examiners no longer has jurisdiction over an applicant after he is sworn in, and I was sworn in over seven (7) years ago.

87. The most recent Committee substantially parroted a bad-faith argument made on behalf of the initial Committee, which argued in federal district court that in June 1985, ". . . it was agreed that plaintiff [Martin] should see an independent psychiatrist for evaluation. However, plaintiff subsequently refused to see the psychiatrist." The transcript of the hearing on 4-5-90 verifies what I previously wrote about the reasons no *second* psychiatric evaluation ever occurred:

MR. BARON [Chairman of NJ Committee on Character]: "Someone at the state level tried to coordinate it [second psychiatric evaluation], and there was a problem because you were going away for a period of time and you tried to reach Dr. Schwartz [psychiatrist appointed by Committee]. As I recall from what you told us before he was not available. I understand all of that.

"My perception of all of that, Mr. Martin, I say this with due respect to you, is that if it didn't come about, some greater effort should have been made *not on your part, but on the part of the Committee* to bring it about [emphasis added].

MR. MARTIN: "I did what I could."
TRN of 4-5-90 hearing, p. 92, lines 7 - 18.

ISSUE

IS RECUSAL AND DISQUALIFICATION APPROPRIATE WHERE A JUDGE'S IMPARTIALITY MIGHT REASONABLY BE QUESTIONED, AS WHERE HE ISSUES OPINIONS WHICH CLEARLY CONTRADICT (A) STIPULATIONS REACHED DIRECTLY BETWEEN THE ADVERSARY PARTIES, (B) PRIOR ORDERS AND OPINIONS FROM JUDGES IN THE SAME MATTER, (C) WELL-ESTABLISHED PRINCIPLES OF STATUTORY AND OF CONSTITUTIONAL LAW, TO CULMINATE IN HIS IGNORING A MOTION FOR RECUSAL?

ARGUMENT

16. In Liljeberg v. Health Services Acquisition Corp., 108 S. Ct. 2194 (1988), US Supreme Court held that a violation of the recusal statute does not require scienter, although a judge's lack of knowledge about the disqualifying circumstances may bear on the question of an appropriate remedy. The touchstone is whether a reasonable person, knowing the relevant facts, would expect that the judge knew of circumstances creating an appearance of partiality, notwithstanding a finding that the judge was not actually conscious of the circumstances warranting disqualification. The district court judge, who was a trustee of the same university seeking a declaration of ownership by a corporation in which the university had an active interest, violated the recusal statute even though his failure to disqualify himself was supposed to have been due to his forgetting about the university's interest when the suit came to trial.

17. The fact of Judge Fisher's conclusive bias in favor of the State of NJ cannot be questioned. For the first time in the history of this nation, an attorney has been deemed a non-attorney without notice, hearing, or lawful cause under the fiction of a "void *ab initio*" doctrine, whose province previously had been primarily restricted to family law, where it reflected the influence of religious authorities in marriage and in divorce. The transcripts show the Committee's Chairman specifically admitting that, ". . . if it [second evaluation] didn't come about, some greater effort should have been made not on your part, but on the part of the Committee to bring it about." Ex-2(a). The documents previously submitted in this case consistently bear out the same admission: I have not caused the delays. To the contrary, I specifically and uncategorically objected to their dilatory tactics. See Ex-1(a). When a judge deliberately distorts uncontested or

admitted facts about basic premises in a lawsuit to make the opposite the "truth," a judge's "impartiality might reasonably be questioned."

17. In Aetna Life Insurance Co. v. Lavoie, 475 US 813 (1986), the Court set forth these elements to warrant not merely a recusal, but also a constitutional violation, where the judge at issue served on a state court:

> "More than 30 years ago Justice Black, speaking for the Court, . . . acknowledge[d] that what degree or kind of interest is sufficient to disqualify a judge from sitting 'cannot be defined with precision.' Nonetheless, a reasonable formulation of the issue is whether the 'situation is one which would offer a possible temptation to the average . . . judge to . . . lead him not to hold the balance nice, clear, and true.'"

475 US at 821-822.

18. The recusal statute, at 28 USC Sec. 455(a), calls for recusal and disqualification under circumstances must less compelling than those *sub judice*. The evidence in support of this Motion rivals the one simultaneously directed against Magistrate Wolfson, who reached a foreordained decision through verified *ex parte* communications, prior to receipt of any opposition from the State, but she at least issued a decision on the Motion to Recuse directed against her further involvement. See docket entries at 20a - 21a.

19. According to IN RE WOLF, 842 F. 2d 464 (DC Cir. 1988), mandamus was the appropriate remedy for a district court's dismissal with prejudice after the adversary parties stipulated to voluntary dismissal without prejudice. The stipulated dismissal was effective automatically and did not require judicial approval, so that the district court lacked authority to alter the stipulation and order the dismissal to be with prejudice.

20. Likewise, in the matter at bar, the adversary parties to the underlying case reached an agreement that I had nothing to do with the prolonged delay, which exceeded seven (7) years and will likely continue

one way or another, until a neutral federal trial judge is appointed to the cases. Nonetheless, in spite of all the evidence, Judge Fisher dismissed the case several times, or affirmed Magistrate Wolfson's dismissal, and alleged that I was responsible for the delays. (Magistrate Wolfson has not been appointed to the most recent case.)

21. In an Order dated 9-19-90 in a prior case, Judge Fisher denied my Motion for Recusal and Disqualification. See Ex-11(a). His reasons are in a Memorandum reproduced in relevant part at Ex-7(a) to 10(a). He claims that "[t]he continuous resort to federal court had resulted in the delay of the character committee's determination." Ex-7(a). However, if that were accurate, the committee would never have concluded their scam, because resort is still being made to the same federal court, and such efforts have been continuing since 1986.

22. A trial judge has not discretion to carry out any of the ploys Judge Fisher has done, including the most recent one, which was to ignore the Motion to Recuse and to Disqualify.

CONCLUSION

A writ of mandamus should issue to compel Judge Fisher to recuse and to disqualify himself from all further involvement in the related cases, with a directive to disregard his rulings to date as void *ab initio*.

Respectfully submitted,

DATED: July 29, 1991

James L. Martin

James L. Martin; 912 McCabe Ave.; Wilm., DE 19802 (302) 652-3957

when a determination could be expected from that. Now, you may not be satisfied with Judge Gerry's determination, I don't know, and you may decide to go further with that. And the only thing that I can say to you is, as long as those proceedings continue, unless some Court directs us, otherwise, I am not prepared to move forward and to complete your application, and I understand that you object to us doing that.

MR. MARTIN: Absolutely.

MR. BARON: So I am not going to do that.

MR. MARTIN: I don't object to the Committee moving forward, I object to the defendants in a related lawsuit serving as disinterested ju[illegible] That's preposterous.

MR. BARON: I understand your complaint and I say to you again, since none of us believed ourselves to be in that status, given Judge Wolfson's most resent report and recommendations, we had no trepidation with that whatsoever. Your disclosure that that's not the case because of the exceptions that you have filed, which is coming to us for the

Ex-1(a)

WAS THE ONLY DISCUSSION THAT WE HAD ABOUT ITINERARY.

MY RECOLLECTION IS THAT AFTER JEAN LIDON DID TRY TO SCHEDULE DR. SCHWARTZ WITH YOU, THERE WAS A CERTAIN PERIOD -- EXCUSE ME. IT WAS THREE YEARS BEFORE JEAN CONTACTED HIM. I APOLOGIZE. SOMEONE AT THE STATE LEVEL TRIED TO COORDINATE IT, AND THERE WAS A PROBLEM BECAUSE YOU WERE GOING AWAY FOR A PERIOD OF TIME AND YOU TRIED TO REACH DR. SCHWARTZ. AS I RECALL WHAT YOU TOLD US BEFORE HE WAS NOT AVAILABLE. I UNDERSTAND ALL OF THAT.

MY PERCEPTION OF ALL OF THAT, MR. MARTIN, I SAY THIS WITH DUE RESPECT TO YOU, IF IT DIDN'T COME ABOUT, SOME GREATER EFFORT SHOULD HAVE BEEN MADE NOT ON YOUR PART, BUT ON THE PART OF THE COMMITTEE TO BRING IT ABOUT.

MR. MARTIN: I DID WHAT I COULD. I FOUND OUT THAT AN ATTEMPT TO SCHEDULE THIS APPOINTMENT OCCURRED AFTER I INDICATED THAT I WAS NOT GOING TO BE THERE, AND IT WAS NOT EVEN DONE THROUGH ME. SO, I KNEW THAT THE CONFIDENTIALITY AGREEMENT WAS BROKEN. I WROTE BACK WITHIN DAYS AND I SAID AND I LEARNED THAT THIS HAPPENED AND I LEFT, I THOUGHT THE COMMITTEE HAD DISPENSED WITH

MR. LARIO: WHAT ARE THEY TAPES OF?

MR. MARTIN: THESE ARE TAPES THAT I HAVE HERE THAT ARE TAPES MADE WHEN I WAS IN COLLEGE. AND WHEN I WAS TALKING WITH THE REGISTRAR AND THE VICE PRESIDENT AND THEY DECIDED BASED UPON MY DECISION TO QUIT THE COLLEGE, THE REASON YOU WILL HEAR THAT MY THINKING WAS NOT RATIONAL. SO, THEY CALLED MY COUSIN WHO IS A PSYCHIATRIST AND CONVINCED HIM BEHIND MY BACK TO GO INTO A MENTAL INSTITUTION.

MR. LARIO: ARE THESE CONVERSATIONS WITH YOU AND THE VARIOUS INDIVIDUALS, FIRSTHAND CONVERSATIONS OR ARE YOU RECAPPING IT?

MR. MARTIN: THE ACTUAL THING. EVEN THE CONVERSATION WITH THE PSYCHIATRIST INSIDE THE INSTITUTION.

MR. BARON: I WILL GIVE YOU MY RESPONSE TO THAT. IN WEIGHING YOUR CERTIFICATION, I DON'T CARE WHAT YOUR MENTAL STATE WAS IN 1975, BUT I'M VERY MUCH CONCERNED WITH WHAT YOUR MENTAL STATE IS TODAY. THE PLAYING OF THOSE TAPES WILL TELL ME, I ASSUME, SOMETHING ABOUT CONVERSATIONS THAT OCCURRED IN 1975. THEY MAY OR MAY NOT TELL ME ABOUT THE LUCIDITY, BUT THEY WILL TELL ME THOSE CONVERSATIONS OCCURRED AND WHAT THE SUBSTANCE OF THEM WERE.

DOES NOT RAISE TO THE LEVEL OF A MEDICAL PROBLEM. THE SAME THING APPLIES IN THE CRIMINAL ~~THING~~ REALM.

MR. BARON: SINCE WE LAST MET IN 1985, WE MET IN 1988 AS WELL. LET ME DIRECT YOUR ATTENTION TO 1985. HAVE YOU RECEIVED ANY PSYCHIATRIC TREATMENT FROM THAT DATE UNTIL THE PRESENT?

MR. MARTIN: NO.

MR. BARON: HAVE YOU BEEN CONFINED IN ANY WAY FOR PSYCHIATRIC TREATMENT?

MR. MARTIN: NO.

MR. BARON: HAVE YOU HAD ANY MEDICAL TREATMENT FOR ANY CONDITION THAT YOU DID NOT DISCLOSE TO US PREVIOUSLY DURING ANY OF YOUR YEARS?

MR. MARTIN: I WILL ANSWER THAT, BUT IT IS OBJECTIONABLE. I DID GO TO THE DOCTOR FOR A KIND OF MEDICINE (FULVICIN, WHICH IS) USED TO TREAT A FUNGAL INFECTION, ATHLETES FOOT, TRAPPED UNDER MY TOENAIL.

MR. BARON: ALL RIGHT. I'M NOT CONCERNED ABOUT SOMETHING LIKE THAT. I MEAN A SERIOUS HEALTH CONDITION AS OPPOSED TO WHETHER YOU MIGHT HAVE HAD A FUNGICIDE OR WHETHER YOU MIGHT HAVE HAD AN EAR INFECTION OR COLD. I'M ASKING ABOUT ANY OTHER TYPE OF MEDICAL TREATMENT THAT MIGHT HAVE BEEN SERIOUS.

MR. MARTIN: I WILL OBJECT, BUT

AN EXPERT ON YOUR BEHALF. THE OTHER PARTY WILL PRESENT AN EXPERT ON THEIR ~~HIS~~ BEHALF. THE COURT MIGHT FIND THAT THEY NEED TO HEAR AN INDEPENDENT EXPERT TO DECIDE WHICH ONE IS RIGHT.

MR. MARTIN: MY MEDICAL DOCTOR WOULD NOT HAVE ANY VESTED INTEREST TO ISSUE ANY KIND OF AN EVALUATION ADVERSE TO ME OR ADVERSE TO THE COMMITTEE.

MR. BARON: I WOULD BE HAPPY TO HAVE ~~YOU~~ YOUR MEDICAL DOCTOR SUBMIT A REPORT TO DR. SCHWARTZ AND HAVE HIM EVALUATE THAT AS PART OF WHAT I WOULD ASK HIM TO DO. (MR. MARTIN: WOULD I HAVE TO SIGN MR. BARON:) ~~WITH DR. SCHWARTZ.~~

MR. MARTIN: WE WILL MARK THIS P-3.

(EXHIBIT P-3, MEDICAL AUTHORIZATION AND RELEASE FORM, MARKED FOR IDENTIFICATION.)

MR. BARON: THIS IS WHAT I THINK I HAVE SEEN. IS THIS THE ~~SCHWARTZ~~ SPORTS PHYSICIAN THAT YOU MENTIONED EARLIER?

MR. MARTIN: YES.

MR. BARON: THIS IS NOT A PSYCHIATRIST?

MR. MARTIN: NO, IT IS MY MEDICAL DOCTOR.

MR. BARON: NOR A PSYCHOLOGIST. AGAIN, I WANT TO SEE SOMEONE TRAINED IN PSYCHIATRY OR PSYCHOLOGY TO TELL ME ABOUT YOUR CONDITION. BY THE WAY

DR. COPELAND: WHAT CONDITION?

MR. BARON: WELL, THAT IS AN

INTERESTING QUESTION, DOCTOR. HIS PRESENT PSYCHIATRIC CONDITION.

DR. COPELAND: HAVE YOU ESTABLISHED THAT HE HAS A PSYCHIATRIC CONDITION AT THIS TIME?

MR. BARON: I'M NOT -- NO. WHAT I HAVE ESTABLISHED IS THAT THERE IS A DOUBT IN MY MIND.

DR. COPELAND: FROM WHAT EVIDENCE?

MR. BARON: EXCUSE ME. I DON'T HAVE TO RESPOND TO YOU UNLESS YOU ARE REPRESENTING MR. MARTIN TODAY.

DR. COPELAND. I'M JUST ASKING. MR. BARON:

MR. MARTIN: NO, HE'S NOT REPRESENTING ME, BUT I THINK IT'S IMPORTANT --

MR. BARON: I WILL ANSWER YOU, BECAUSE YOU HAVE THE RIGHT TO ASK THE SAME QUESTION.

MR. MARTIN: I HAVE BEEN TRYING TO GET TO THE SAME THING. I HAVE TALKED WITH OTHER PEOPLE TOO.

MR. BARON: I HAVE LOOKED AT THE FOLLOWING ITEMS THAT CAUSE ME CONCERN. I HAVE LOOKED AT AND I HAVE HEARD TESTIMONY ABOUT THE QUESTION OF THE VISITATION OF THE TWO INSTITUTIONS. I HAVE LISTENED TO YOUR EXPLANATION OF IT AND I HAVE NOT FRANKLY, IN ANY WAY, MADE A DETERMINATION AS TO WHY IT HAPPENED OR WHETHER IT SHOULD HAVE HAPPENED.

DR. COPELAND: IS THAT RELEVANT?

Ex-6(a)

> need for the Committee to proceed with their determination of plaintiff's application free of the specter of impending litigation. Yet less than a month had passed after Chief Judge Gerry rendered his opinion when plaintiff informed the Committee that unless they met his demand for a new panel, he would again resort to the federal court for relief. By instituting litigation in the federal court for a third time, without allowing the Committee the requisite time to reach a decision, plaintiff himself is creating the very obstacles to relief of which he complains.

A reasonable person, taking into account that many Committee meetings had been canceled because of Martin's bringing of litigation or threat to bring litigation, would conclude that I had made the objective observation that each time he applied to the Federal court, the State bar suspended its proceedings. Although the New Jersey Supreme Court has since told the Committee to proceed with the processing of Martin's application regardless of impending or current litigation, this was not the case at the time I wrote my opinion. In fact, Committee activity had been suspended each time litigation was threatened or actually ongoing.

For the same reasons, plaintiff fails to show support that a reasonable person would find me impartial as to my statement that a good part of plaintiff's delays were caused by his own actions. The continuous resort to federal court had resulted in the delay of the character committee's determination.

Martin further asserts that "The fact of [my] conclusive bias in favor of the State of NJ cannot be questioned"; yet plaintiff offers no proof to back this

assertion. He instead reintroduces the notion that his rights have been deprived and that he did not cause the delays, and concludes with "when a judge deliberately distorts uncontested or admitted facts about basic premises in a lawsuit to make the opposite the "truth," a judge's impartiality might reasonably be questioned." p.6. These conclusory statements are insufficient to warrant a finding that I should recuse myself.

It is important to note that in considering whether to recuse himself a judge has as "much obligation . . . not to recuse himself when there is no occasion for him to do so as there is for him to do so when there is." Wolfson v. Palmieri, 396 F.2d 121, (2d Cir. 1968) (citing In re Union Leader Corp., 292 F.2d 381, 391 (1st Cir. 1961), cert. denied, 368 U.S. 927 (1961); Simonson v. General Motors Corp., 425 F. Supp. 574 (E.D. Pa. 1976). Moreover, in

> assessing the reasonableness of a challenge to his impartiality, each judge must be alert to avoid the possibility that those who would question his impartiality are in fact seeking to avoid the consequences of his expected adverse decision . . . . Litigants ought not to face a judge where there is a reasonable question of impartiality, but they are not entitled to judges of their own choice.

H.R. Rep. No. 1453, 93d Cong., 2d Sess. 1974 U.S. Code Cong. & Admin. News, at 6351, 6355 (quoted in Blizard v. Fielding, 454 F. Supp. 318, 320-21 (D. Mass. 1978), aff'd, Blizard v. Frechette, 601 F.2d 1217 (1st Cir. 1979). In Blizard, plaintiff sought to disqualify the judge based on, amongst other things, his use of certain terminology in writing his opinion. Specifically, in a

Ex-8a
24a

prior opinion, the judge used the word "obsessed" to refer to plaintiff's substantial work on her personal appeal and termed her litigation "marathon." Chief Judge Caffrey for the federal District of Massachusetts found this choice of words in an earlier opinion insufficient to support his disqualification, because a finding of impartiality was simply unsupported by the record.

Likewise, my use of terminology characterizing plaintiff as causing delay in his committee application cannot be seen by reasonable people as implicating my impartiality. There is nothing in the record to evidence that I harbor any partiality towards defendants. Further, it has been held that, absent some evidence of bias outside the record, a party's motion to recuse must fail. See United States v. Boffa, 513 F. Supp. 505, 509 (D. Del. 1981) ("The determination of bias, prejudice or lack of partiality must be made on the basis of conduct which is extra-judicial in nature.")

Finally, I must consider judicial economy in my decision of whether to recuse myself. This case is extremely complicated factually, especially given the multiple actions and multiple defendants named by plaintiff. As such, "for a new judge to achieve familiarity would require wasteful delay or duplicated effort." See O'Shea v. United States, 491 F.2d 774 (1st Cir. 1974).

Ex-9(a)
25a

For the reasons set forth above, plaintiff's motion to recuse me must be denied. An order accompanies this opinion.

September 19, 1990.

Ex-10(a)
26a

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JAMES L. MARTIN,

Plaintiff, : Civil No. 90-2616 (CSF)

v. : ORDER

STEPHEN W. TOWNSEND, et al., :

Defendants. :

This matter having come before the court on plaintiff's motion for my recusal, and the court having read and considered the written submissions and oral argument of counsel, and good cause appearing,

It is on this 19th day of September 1990,

ORDERED that plaintiff's motion be and hereby is denied.

CLARKSON S. FISHER
United States District Judge

Ex-11(a)
27a

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
UNITED STATES COURT HOUSE
CAMDEN, NEW JERSEY 08101-0588

CHAMBERS OF
JOHN F. GERRY
CHIEF JUDGE

ENTERED
ON THE DOCKET
19 88
WILLIAM T. WALSH, CLERK
By (Deputy Clerk)

FILED
MAY 24 1988
AT 8:30 M
WILLIAM T. WALSH
CLERK

May 24, 1988

Mr. James L. Martin
912 McCabe Avenue
Wilmington, Delaware 19802

LETTER OPINION

Emerald L. Erickson, Deputy Attorney General
Richard J. Hughes Complex
CN 116
Trenton, New Jersey 08625

Re: James L. Martin v. Stephen W. Townsend, et al.
Civil Action No. 86-1352 (REC)

Dear Litigants:

This is an objection to a Report and Recommendation of Magistrate Freda Wolfson denying without prejudice plaintiff's motion to reinstate his complaint in the above-captioned matter. The history of this action is set out in the Magistrate's opinion of December 9, 1987, and we need not repeat it here.

Plaintiff's main objection to Magistrate Wolfson's recommendation appears to be an argument that the magistrate incorrectly found that plaintiff was advised that a psychiatric evaluation was a prerequisite to the New Jersey Committee on Character proceeding with its determination of Martin's fitness to practice law. Plaintiff contends that the Committee and he agreed that submitting to any such evaluation would be discretionary on Martin's part. We decline to take a position on this point since we see this issue as being incidental to the matter at hand.

Other than objecting to this finding, Martin presents the court with no reason why his complaint should be reinstated other than his understandable frustration with the numerous delays in his licensing procedure. Yet Judge Cowen, in his oral decision of September 15, 1986, ruled that this court should hold its proceedings in abeyance, pending the Committee on Character's resolution of the issues surrounding Martin's fitness to practice law in New Jersey. Judge Cowen favored permitting the matter to go forward at the state level, since

> either one of two things will happen: either you will be licensed, in which event there is really not anything that we should talk about; or, if you are not licensed for some

Ex-12a
pa.

> reason, of course, you are always in a position to come into this or some other federal court, perhaps to the United States Supreme Court.

(Transcript of Motion before Judge Cowen, September 15, 1986, at 10.)

Judge Cowen, then, set out a condition, the occurrence of which would indicate to this court that active continuation of the plaintiff's federal action could be permitted: a denial of plaintiff's application to be licensed to practice law in New Jersey. (As an aside, we also note that certification by the state might not necessarily mean that certain of plaintiff's federal claims could not continue to be advanced.) What Judge Cowen felt must antedate the federal suit, however, was a decision on Martin's application by the New Jersey Committee on Character.

Both Judge Cowen and Magistrate Wolfson voiced concerns that the Committee promptly complete its investigation of Martin, and it is true that Judge Cowen's decision to administratively terminate plaintiff's complaint was made in September of 1986. Yet it was plaintiff who pursued an appeal to the circuit from Judge Cowen's decision, and then sought a writ of certiorari from the Supreme Court. Plaintiff then filed the instant motion for reinstatement of his complaint, again stalling action by the state. We do not in any way mean to criticize plaintiff for pursing his right of appeal; we do however note that it is quite evident that the Committee on Character will not continue its proceedings pertaining to Martin's certification as long as there is an active suit underway in federal court.

Concerned as we are about the length of time which has passed since the plaintiff passed the New Jersey Bar Exam, without the state having made a determination, one way or the other, as to his admission to the state bar, we feel that Judge Cowen's decision of September 15, 1986, which was affirmed by the Third Circuit, should have an opportunity to take effect. By this we mean that the state Committee on Character should be given a reasonable time to expeditiously complete its investigation and decide the matter of the plaintiff without the active threat of federal litigation.

We suggest that the plaintiff, in order to resolve this matter as soon as is practicable, communicate with the Committee

Ex-13a
pa.

to ascertain exactly what is required of him for that body to timely complete its determination of his fitness to practice law, and make clear to the Committee his desire for a prompt decision. Since it is apparent that the Committee will not do so if a federal suit is pending against it, we suggest that the plaintiff take note of that reality. Once the Committee makes its decision, both the plaintiff and this court will have something concrete upon which further action may or may not be contemplated.

Finally, we join both Judge Cowen and Magistrate Wolfson in noting that our deference to state proceedings has its limits, and that those limits are rapidly coming into sharper focus.

For the reasons set out above, Magistrate Wolfson's Report and Recommendation of December 9, 1987, denying plaintiff's motion to reinstate his complaint in civil action number 86-1352(REC) is accepted as the decision of this court. Unless specifically noted above, we do so without passing on the specifics of the Magistrate's opinion.

The accompanying order has been entered.

JOHN F. GERRY, CHIEF JUDGE
UNITED STATES DISTRICT COURT

Ex-14a

to come back into court on an application pending resolution by the State of whatever proceedings will occur there before the character committee; or, if any decision of the State administrative both is not to your liking, upon resolution by any appeal you may take to the New Jersey Supreme Court. I think that is the proper way to handle this matter and I think it is probably in your best interests.

MR. MARTIN: I can't --

THE COURT: Now, look, if you claim that they are not with dispatch reviewing your application, you could come into court here and I will deal with your claim. If, on the other hand, they claim that you are not being -- you are not answering to their reasonable requests concerning their endeavors, you know, that is another problem. But why don't I administratively terminate it, let it go through the State proceedings and take it from there?

MR. MARTIN: Well, what happens if ten years from now they come back to me and, supposing I am admitted to practice, ten years later they come back and say, hey, we made a mistake here, you should never have have been licensed. You actually didn't pass our bar exam. You failed our exam. You have to take it over.

THE COURT: Let me ask you, sir. If ten years from now you are a practicing attorney and you have got a certification from the character committee, if you have a

31a
Ex-15

passing grade from the Board of Bar Examiners, I don't want to say that is [illegible] but the [illegible] I don't raising it, I don't want to say it is ridiculous, but I just don't, it is not the case before the Court.

MR. MARTIN: Actually, I think there is a likelihood that something like that could happen simply because I took the UBE section of the Bar exam in Pennsylvania and they have done essentially the same thing there that they said I did here. They say I never took the exam and never passed it even though I transferred my grades here --

THE COURT: We will deal with that case when it arises. For the purposes of the present case, why don't I enter an order administratively terminating the matter, giving either party the right to make an application to reopen the case. They should the order read, upon resolution of the application for the plaintiff for licensure as a New Jersey attorney. How is that?

MS. ERICKSON: I suppose upon final resolution before the New Jersey Supreme Court, your Honor.

THE COURT: On his application for licensure.

MS. ERICKSON: Yes.

MR. MARTIN: That would force me to appeal their decision all the way, and I don't think that is necessary at all.

THE COURT: Oh, I certainly -- I would absolutely

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
TRENTON, N. J. 08605

CHAMBERS OF
CLARKSON S. FISHER
SENIOR JUDGE

December 7, 1990

James L. Martin
912 McCabe Avenue
Wilmington, Delaware 19802

Glenn R. Jones, Deputy Attorney General
Richard J. Hughes Justice Complex, CN 116
Trenton, New Jersey 08625

LETTER OPINION

Re: Martin, et al. v. Townsend, et al.,
Civil No. 90-2616 (CSF)

Gentlemen:

It appears that the claims asserted by plaintiff in this matter have already been litigated before this court in Martin v. Townsend, et al., Civil Action No. 86-1352 (Oct. 5, 1988) or are related to that transaction. As such, they are barred from being tried under the principles of res judicata, Montana v. United States, 440 U.S. 147 (1979) (relitigation between parties of issues decided in an earlier suit is improper) and collateral estoppel, see Allen v. McCurry, 449 U.S. 90, 95 (1980) (Claims arising from the same transaction litigated in prior case is improper). In addition, just as this court abstained from intervening in the State licensure proceedings in 1988, it must do the same today. See Middlesex County Ethics Committee v. Garden State Bar Ass'n, 457 U.S. 423, 431 (1982). As in 1988, the Committee on character has not rendered an opinion with regard to Martin's license to practice law in New Jersey; therefore, Martin has failed to exhaust his State remedies and to intervene would be contra to the doctrine of abstention.

For the above reasons, the New Jersey State defendant's motion to dismiss plaintiff's complaint for failure to state a claim upon which relief can be based is granted. An order accompanies this opinion. No costs.

Very truly yours,

CLARKSON S. FISHER
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

James L. Martin, plaintiff, : Civil Action No. 91-1145 (CSF)

v. : Jury Trial Demanded

Julie Knox and Ronald Nau, :
defendants

TO BE ARGUED: MONDAY, JUNE 3, 1991

Plaintiff's **NOTICE OF MOTION FOR RECUSAL AND DISQUALIFICATION OF HONORABLE CLARKSON S. FISHER (with proposed ORDER)**

I, James L. Martin, will move for the recusal and disqualification of **HONORABLE CLARKSON S. FISHER** on June 3, 1991 for the reasons set forth in the Affidavit accompanying my Brief.

DATED: March 22, 1991 BY: James L. Martin
James L. Martin; 912 McCabe Ave.; Wilm., DE 19802 (302) 652-3957

Certificate of Service

I, James L. Martin, hereby certify thatIhired the Attorney's Process Service, Int'l, at 100 W. Franklin Ave.; Minneapolis, MN 55404, to serve a true and correct copy of the **Plaintiff's NOTICE OF MOTION FOR RECUSAL AND DISQUALIFICATION OF HONORABLE CLARKSON S. FISHER (with proposed ORDER)** by personal service with the summons and complaint as evidenced on the return of service to be filed well before the June 3, 1991 return date for this Motion.

BY: James L. Martin
James L. Martin; 912 McCabe Ave.; Wilmington, DE 19802; 302) 652-3957

12BE RL16
APPEAL

U.S. District Court
District of New Jersey (Trenton)

CIVIL DOCKET FOR CASE #: 91-CV-1145

MARTIN v. KNOX, et al Filed: 3/14/91
Assigned to: Sr. Judge Clarkson S. Fisher Jury demand: Plaintiff
Demand: $0,000 Nature of Suit: 440
Lead Docket: None Jurisdiction: Federal Question
Dkt# in other court: None

Cause: 42:1983 Civil Rights Act

JAMES L. MARTIN
plaintiff

JAMES L. MARTIN
[COR LD NTC] [PRO SE]
912 MCCABE AVE.
WILIMINGTON, DE 19802
302-652-3957

v.

JULIE KNOX
defendant

IRENE ELAINE DOWDY
[COR LD NTC]
Office of the United States Attorney
402 East State St.
Room 502
Trenton, NJ 08608
609-989-2190

RONALD NAU
defendant

IRENE ELAINE DOWDY
(See above)
[COR LD NTC]

3/14/91	1	COMPLAINT filed;; jury demand FILING FEE $ 120 RECEIPT # 143910 (lk) [Entry date 03/18/91]
3/18/91	--	SUMMONS(ES) issued for JULIE KNOX, RONALD NAU (60 Days) (Mailed to Pltf.) (lk) [Edit date 03/18/91]
3/18/91	2	NOTICE of Allocation and Assignment filed. Magistrate Wolfson (Trenton-Fisher)(NM) (lk)
5/6/91	3	RETURN OF SERVICE executed as to SOLICTOR GENERAL OF THE U.S. on 3/27/91, as to ATTORNEY GENERAL on 4/24/91, & as to U.S. ATTORNEY on 4/23/91 (am) [Entry date 05/08/91]
5/6/91	4	Notice of MOTION by JAMES L. MARTIN to recuse judge FREDA L. WOLFSON [4-1] motion referred to Magistrate Freda L. Wolfson, Motion hearing set for 10:00 6/3/91 on [4-1] motion . (am) [Entry date 05/08/91]
5/6/91	5	Notice of MOTION by JAMES L. MARTIN to recuse judge CLARKSON S. FISHER, Motion hearing set for 10:00 6/3/91 on [5-1] motion . (am) [Entry date 05/08/91]
5/6/91	6	Notice of MOTION by JAMES L. MARTIN for summary judgment, Motion hearing set for 10:00 6/3/91 on [6-1] motion . (am) [Entry date 05/08/91]
5/20/91	7	DECLARATION by IRENE DOWDY (am)
5/24/91	8	RETURN OF SERVICE executed as to JULIE KNOX, RONALD NAU 4/1/91 Answer due on 5/31/91 for RONALD NAU, for JULIE KNOX (am)
5/30/91	9	ANSWER to Complaint by JULIE KNOX, RONALD NAU (am)
5/30/91	10	ORDER, set scheduling conference for 10:30 9/12/91 (signed by Magistrate Freda L. Wolfson) (am)
6/3/91	11	Minute entry: Proceedings recorded by Ct-Reporter: none; Minutes of: 6/3/91; The following actions were taken, [6-1] motion for summary judgment taken under advisement, [5-1] motion to recuse judge CLARKSON S. FISHER taken under advisement, [4-1] motion to recuse judge FREDA L. WOLFSON taken under advisement By Sr. Judge Clarkson S. Fisher (am)
6/5/91	12	ORDER denying [6-1] motion for summary judgment, and dismissing action on the grounds of res judicata and failure to state a claim upon which relief can be granted (signed by Sr. Judge Clarkson S. Fisher) (am) [Entry date 06/06/91]
6/6/91	--	Case closed (am)
6/12/91	13	ORDER denying [4-1] motion to recuse judge FREDA L. WOLFSON (signed by Magistrate Freda L. Wolfson) (NM) (AC)

Ex-20a 36a

		[Entry date 06/13/91]
6/17/91	14	Notice of MOTION by JAMES L. MARTIN to proceed in forma pauperis on appeal, Motion hearing set for 10:00 7/15/91 on [14-1] motion . (jb) [Entry date 06/18/91]
6/17/91	15	NOTICE OF APPEAL filed at 12:04 by JAMES L. MARTIN Re: [12-1] order dismissing action on the grounds of res judicata and failure to state a claim upon which relief can be granted . Fee Status: not paid. Copies of notice of appeal sent to USCA and Attorney(s): James L. Martin, pltf pro se, 912 McCabe Av., Wilmington, DE 19802; Irene E. Dowdy, AUSA, 402 East State St., Room 502, Trenton, NJ 08608 (jb) [Entry date 06/18/91]
6/17/91	16	Transcript Purchase Order RE: [15-1] appeal (none req) (jb) [Entry date 06/18/91]
6/18/91	--	Record on appeal sent to U.S. Court of Appeals: [15-1] appeal (jb)

Ex-21a 37a

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. misc. No. 91-8054

James L. Martin, petitioner : No. 91-_____

v. :

Clarkson S. Fisher, respondent :

MOTION TO RECUSE AND DISQUALIFY JUSTICES HUTCHINSON, COWEN, STAPLETON, ALDISERT, SEITZ, MANSMANN, HIGGINBOTHAM, SLOVITER, NYGAARD, ALITO, AND GREENBERG, with proposed ORDER

I, James L. Martin, certify the following statements to be true based on my personal knowledge, and I make them under penalties for perjury pursuant to 28 USC Sec. 1746 this 29th day of July 1991:

1. I incorporate herein by reference my Motion for Disqualification of Justices HUTCHINSON, COWEN, STAPLETON, ALDISERT, SEITZ, and, MANSMANN, filed here on 4-3-89, with the affidavit in support of it, and my supporting Memorandum of Law in Martin v. Delaware Law School of Widener University, Inc., et. al., No. 88-3428, 3rd Cir. See attachments. The recusals should be granted for the same reasons they were granted in the Orders of 4-26-89. Those judges who have not already granted the motion as to themselves should now issue the recusals sought in view of the increasing problems stemming from affiliation between judges and institutions responsible for aiding and abetting the well-documented casual and summary "disbarments" without notice, hearing, or cause.

2. I incorporate herein by reference my **Motion for Disqualification of Justices Higginbotham, Sloviter, and Nygaard,** filed here on 8-25-89, with the affidavit in support of it, and my supporting

Memorandum of Law in Martin v. Delaware Law School of Widener University, Inc., et. al., 625 F. Supp. 1288, 884 F. 2d 1384, cert. den., 110 S. Ct. 411 (1989), reh. den., 1-8-90. See exhibits. In further support of Judge Sloviter's disqualification I rely upon her participation with the Widener University School of Law as set forth in the April 1990 Issue of the School's publication entitled "Casenotes." The matter *sub judice* is related to the cases involving the School inasmuch as the patterns by which my professional licenses have been impaired are comparable, they emanated from the disinformation scheme at the law school, and Edward Smith, one of the parties, is a former law professor at the same law school.

3. Judge Alito worked as a US Attorney in NJ for several years before beginning his tenure as a judge. Because the US Attorney's Office in NJ has been retained to represent parties to the underlying case, Judge Alito should be recused and disqualified. Likewise, Judge Greenberg served as a judge with the NJ Superior Court Appellate Division from 1980-1987. He therefore knows at least a few of the parties to the related, pending appeals and cases, because the parties include the member judges serving on the NJ Supreme Court. Personal or professional association with real parties in interest is a sufficient basis for seeking recusal and disqualification.

WHEREFORE, I respectfully request that these Motions be granted.

DATED: July 29, 1991 James L. Martin

James L. Martin, 912 McCabe Ave.; Wilm., DE 19802 (302) 652-3957

ORDER

NOW, this day of 1991, the petitioner's Motion to Recuse and to Disqualify is granted.

_____

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

James L. Martin, appellant : Appeal No. 88-3428

v. : Appellant's Motion for Disqualification of Justices William D. Hutchinson, Robert E. Cowen, Walter K. Stapleton, Ruggero J. Aldisert, Collins J. Seitz, and Carol Los Mansmann, with

Delaware Law School of Widener University, Inc., et. al., appellees : Memorandum of Law in Support of Motion

Motion for Disqualification

I, James L. Martin, certify the facts recited in my "Notice of Possible Judicial Disqualification," filed on 3-9-89 in Martin v. Hon. Daniel Huyett, No. 89-8011 (3rd Cir.), to be true and correct to the best of my knowledge pursuant to 28 USC § 1746, and I incorporate the 3-9-89 Notice herein by reference as though it were set forth here at length. I am relying upon it as the factual basis for this Motion.

Certified to be true this 29th day of March 1989 by James L. Martin.
James L. Martin, affiant

MEMORANDUM OF LAW IN SUPPORT OF MOTION

The Court must accept the facts alleged in the affidavit as true. Mims v. Shapp, 451 F. 2d 415 (3rd Cir. 1973). To warrant disqualification, the affidavit "must give fair support to the charge of a bent of mind that may prevent or impede impartiality of judgment." Berger v. US, 255 US 22, 33 (1921). The appellee School represented in its 1985 Alumni Directory, "As the only law school in Delaware, the Delaware Law School maintains particularly close ties to the Delaware bar and judiciary." In the DE Federal District Court, one may readily confirm the accuracy of this representation. Judge Schwartz served on the School's faculty; Judge Longobardi was a member of the School's Board of Overseers; Judge Roth not only serves on the School's Board of Overseers, she also was awarded an honorary doctor of laws degree from the School in the

spring of 1987. Even beyond DE, some members of the judiciary are affiliated with the School. Judge John Hannum serves on the Widener University Board of Trustees. Judge Robert N.C. Nix, Jr., who signed the Order denying my application for admission to the PA Bar,* is the Chief Justice of the PA Supreme Court who was awarded an honorary doctor of laws degree from the School in Jan. 1980. He has been independently working with the School's Dean, Anthony Santoro, on other matters like opening a branch of the School in Harrisburg later this year.

In Liljeberg v. Health Services Acquisition Corp., 108 S. Ct. 2194 (1988), the US Supreme Court ruled that the federal recusement statute does not require scienter, although a judge's lack of knowledge about the disqualifying circumstances may bear upon the question of remedies. The touchstone is whether a reasonable person, knowing the relevant facts, would expect that the judge knew of circumstances creating an appearance of partiality, notwithstanding a finding that the judge was not actually conscious of the circumstances warranting disqualification. The district court judge, who was a trustee of the same university seeking a declaration of ownership of a corporation in which the university had an active interest, failed to disqualify himself on motion. This failure to remove himself violated the recusement statute even though it was supposed to have been the result of his forgetting about the university's interest when the declaratory judgment suit came to trial.

Liljeberg seems to control the matter at bar. The affiliations recited here are more direct and substantial than what was at stake in Liljeberg. The Motion should therefore be granted.

DATED: March 29, 1989

Respectfully submitted,
James L. Martin
James L. Martin, pro se
912 McCabe Ave.
Wilm., DE 19802
(302) 652-3957

*On 4-5-90, I saw written evidence for the first time that Judge Nix had no jurisdiction over the case because, in October 1983, the licensing authorities duly listed my name in the Official Register as a successful PA lawyer; it was never lawfully removed. JLM 7-26-90

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

James L. Martin, petitioner : C.A. Misc. No. 89-8011

v. :

Hon. Daniel H. Huyett, 3rd : Appellant's NOTICE OF POSSIBLE JUDICIAL DISQUALIFICATION

I, James L. Martin, certify the following members of this Court to be considered for possible disqualification from participating in the disposition of this Petition for a Writ of Mandamus for the following reasons:

1. Hon. William D. Hutchinson. When he served on the PA Supreme Court, Judge Hutchinson participated in the decision to summarily disbar me without cause or hearing in PA because of accusations rooted in false medical reports, and he is also an appellee in the related case presently pending before the Third Circuit, Martin v. Supreme Court of PA, et. al., No. 89-1088. The remedy sought here against Judge Huyett is to compel him to order that the PA State officials release the medical reports they claim to have about me, which they used to supposedly warrant the summary revocation of my driver's license in PA for over 2½ years.

2. Hon. Robert E. Cowen. Judge Cowen presided over the NJ version of this Petition for a Writ of Mandamus before he was promoted to the Third Circuit in Martin v. Townsend, NJ Supreme Court, et. al., No. 86-1352, now again awaiting disposition on appeal at No. 88-5862. The underlying issues are substantially the same, so that Judge Cowen should be disqualified in light of his participation at the trial level in the related case. Also see the Motion for Disqualification of Hon. Robert E. Cowen, filed on 2-28-89, in Martin v. Hon. Joseph J. Farnan, No. 89-8008, incorporated herein by reference.

3. Hon. Walter K. Stapleton. Judge Stapleton was assigned to the

related action originating in DE when he was still in the district court in early 1985. See Martin v. Delaware Law School, PA Board of Law Examiners, et. al., No. 85-53 (JJF), before this Court for the second time at No. 88-3428. Moreover, Judge Stapleton disqualified himself by Order of 12-7-87 in Martin v. PA Board of Law Examiners, et. al., in light of his affiliation with the Delaware Law School in Appeal No. 87-1440, where the related action involving the Delaware Law School and the PennDOT group, against whom the remedy would ultimately be directed since they claim to have custody of the medical records, was consolidated with the one originating in the E. Dist. of PA. Because the Petition sub judice is so closely related to the action against the Delaware Law School to have been consolidated by Order of 1-5-87 (Appeal Nos. 86-1719 and 86-5846), the judges affiliated with the School should be disqualified from this matter.

4. Hon. Ruggero J. Aldisert. As recited in ¶ 3, this appeal involves claims closely related to and previously consolidated with those against Delaware Law School. Because Judge Aldisert was awarded an honorary doctor of law degree from the Delaware Law School at its commencement exercises in May 1986, he should be disqualified from participating in the disposition of this appeal.

5. Hon. Collins J. Seitz. Like Judge Aldisert, Judge Seitz has been closely affiliated with the Delaware Law School for several years, as I recited in more detail in a "Petition for Recusement," filed on 3-27-87, in the consolidated appeal as noted in ¶ 3 above.

6. Hon. Carol Los Mansmann. From 1974 to 3-19-82, Judge Mansmann was an Assistant Attorney General for PA. The Petition for a Writ of Mandamus was filed to compel the AG of PA to release certain medical records its clients claim to have about me that relate to an examination allegedly conducted in 1981-82, at the same time Judge Mansmann worked for the PA AG, still representing

the same clients today in Martin v. Wilson, PA State Police, et. al., No. 88-2300, ED. Pa. Accordingly, it is inappropriate for Judge Mansmann to participate in the disposition of this Petition.

Additionally, other members of this Circuit should consider disqualification if their affiliation with the parties whose interests will be affected by this Petition is sufficiently extensive to prevent disinterestedness.

DATED: March 7, 1989

Respectfully submitted,

James L. Martin

James L. Martin
912 McCabe Ave.
Wilm., DE 19802
(302) 652-3957

Students compete in Annual DiBona Competition

This fall the Moot Court Honor Society sponsored the Eleventh Annual Judge G. Fred DiBona Moot Court Competition. Over seventy students participated in this year's competition which came to a finale on November 9, 1989. This year's competition challenged the students with an appeal to the United States Supreme Court focusing on the issue of privacy and the dual conflict between society's role in life preservation and the individual's right to die.

In the final round which was held in the Moot Court Room, the petitioner, an incompetent who by her mother, requested the court to allow the withdrawal of the gastrostomy tube which is required to sustain her life, was represented by third year regular division student, Lori J. Hahn. The respondents, the administrator of the state hospital at which the petitioner was a patient, and the director of the department of health, asserted the state's compelling interest in preserving life, were represented by Jacqueline R. DiLeo, a second year regular division student. G. Fred DiBona, Jr. '75 stated that this year's finalists both "represented the ideals of excellence and the spirit of the competition." In front of a crowded house and after a closely matched argument, Lori J. Hahn was named the prevailing advocate.

The finalists presented their arguments in front of a most distinguished bench, consisting of: The Honorable Walter K. Stapleton, United States Court of Appeals for the Third Circuit; The Honorable Dolores K. Sloviter, United States Court of Appeals for the Third Circuit; The Honorable Robert N.C. Nix, Jr., Chief Justice, Pennsylvania Supreme Court; The Honorable Andrew D. Christie, Chief Justice, Supreme Court of Delaware; The Honorable Randy Holland, Justice, Delaware Supreme Court; Anthony J Santoro, Dean, Widener University School of Law; G. Fred DiBona, Jr., Esquire.

This contest has traditionally produced a high level of competition, which is a compliment to the School of Law and the Moot Court Honor Society. ■

New Telephone Numbers for WIDENER UNIVERSITY SCHOOL OF LAW

Dean's Office

Anthony J. Santoro, Dean	302-477-2280
Margaret Cunningham, Asst. to the Dean	302-477-2279
John L. Gedid, Associate Dean	717-541-3902
Thomas J. Reed, Associate Dean	302-477-2154

Admissions

Joanne M. Lindsey, Assistant Dean	302-477-2162

Alumni Relations/Development

Vivian G. Bowden, Assistant Dean	302-477-2172

Library

Eileen B. Cooper, Director	302-477-2113
Janet Hirt, Assistant Director	717-541-3927
Circulation Desk–Delaware Campus	302-477-2244
Circulation Desk–Harrisburg Campus	717-541-3933

Ne

Widener University Sch
is pleased to welcome th
new faculty to the law sc
With these new addition
time faculty now numbe

DELAWARE CA

Lawrence M. Clark
Legal Writing Instructor
Instructor Clark earned
in English from the Uni
Maryland and his J.D. fi
Widener University Sch
Law. He has been in pri
tice and served as assist
defender in Chester Cou
Pennsylvania.

David R. Hodas
Visiting Associate Professo
Professor Hodas earnec
in political science from
College and his J.D. fro
University School of La
been engaged in private
served as assistant city
the City of Wilmington
the position as staff atto
the Criminal Tax Divisi
of the Chief Counsel In
Revenue Service.

Jan Ching-an Ting
Visiting Professor
Professor Ting earned
from Oberlin College,
the University of Hawa
J.D. from Harvard Un
has taught at Temple U
School of Law and has
an associate attorney fo
Philadelphia law firm o
Hamilton & Scheetz.

HARRISBURG C

Anthony J. Fejfar
Assistant Professor
Professor Fejfar earnec
from Creighton Unive
J.D. from the Univers
Nebraska College of L
taught at Marquette L
served as a municipal
engaged in private pra
fessor Fejfar also serve
research and planning

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

James L. Martin, appellant : C.A. No. 88-3428

v. :

Delaware Law School of Widener University, Inc., et. al., appellees : APPELLANT's MOTION FOR RECUSEMENT AND DISQUALIFICATION OF JUDGES HIGGINBOTHAM, SLOVITER, and NYGAARD

I, James L. Martin, certify that the following statements are true based upon my knowledge and information, and that they are made under penalties for perjury this 24th day of August 1989 pursuant to 28 USC § 1746:

1. In an Order dated 3-24-87, Judge Higginbotham signed an Order on behalf of a panel including Judges Gibbons and Sloviter, at Ex-1a, which denied my motion for panel rehearing when the matter was before the 3rd Circuit the last time, and dismissed the appeal "without prejudice to appellant's right to file a timely notice of appeal after the district court disposes of the claims against the remaining defendants who were not covered in the district court's prior orders."

2. The following day, 3-25-87, I wrote to PA Judge Huyett and DE Judge Farnan to "request either entry of a final judgment pursuant to Rule 54(b) or, preferably, final judgment as to all remaining claims pertaining to all remaining parties in both of these consolidated cases." Ex-2a.

3. In a sua sponte amendment to their 3-24-87 Order, Judges Higginbotham, Sloviter, and Gibbons wrote: "The dismissal of the appeal in No. 86-5846 for lack of jurisdiction is without prejudice to appellant's right to file a timely notice of appeal after the district court disposes of the claims against the remaining defendants who were not covered in the district court's prior orders." See Ex-3a. (The appeal in No. 86-5846 was an appeal from the same case as the matter sub judice.)

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4. Judge Huyett decided, in an Order dated 5-1-87, which is at Ex-3 attached to my Petition for Rehearing filed here on 8-18-89, and which is incorporated herein, that "because the order of the Third Circuit, dated April 22, 1987, and amending the order of March 24, 1987, clarifies that disposition of claims against remaining defendants relates to 86-5846 [Judge Farnan's case] and not to this action [against the PA Board of Law Examiners, assigned to Judge Huyett], IT IS ORDERED that the motion is DENIED [the motion was "for disposition of claims not covered in the district court's prior orders]."

5. When Judge Huyett's decision, and the subsequent, timely appeal from that decision resulted in the 3rd Circuit's affirmance of the Huyett decision, I reminded Judge Farnan that the remaining claims, not previously resolved, must necessarily relate to the action against the DE Law School, even if a clerical mistake had been made in the caption of the 4-22-87 sua sponte amendment:

> THE COURT: "I am wondering if Judge Huyett said it wasn't his case and he got appealed and affirmed, that sort of only leaves my case--"

TRN., p. 15; lines 15 - 17, of 5-2-88.

6. If a pan balance has a weight on one side but not on the other side, and if it has been conclusively determined that the object is not on the left side, then a judge(s) who determines that the object is not on the right side is definitely evidencing a "bent of mind" more than sufficient to warrant recusement and disqualification.

7. This result is especially appropriate in light of the recent Supreme Court decision in Liljeberg v. Health Services Acquisition Corp., 108 S. Ct. 2194 (1988), holding that a violation of the recusement statute does not require scienter.

8. As the Supreme Court noted in 1986 with its reference to Justice Black's Opinion over three decades ago, if a judge is not able "to hold the balance nice, clear, and true,"* the judge should be recused and disqualified. Judges Higginbotham, Sloviter, and ~~Gibbons~~ Nygaard J&M 9-15-89 are indisputably in that category and should be disqualified.

WHEREFORE, I respectfully request that this Motion be granted.

DATED: August 24, 1989

Respectfully submitted,
James L. Martin
912 McCabe Ave.
Wilm., DE 19802
(302) 652-3957

*Aetna Life Insurance Co. v. Lavoie, 475 US 813, 821-822 (1986).

47.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 86-1719 and 86-5846

JAMES L. MARTIN,
Appellant

v.

PA. BOARD OF LAW EXAMINERS, et al.,
Appellees in No. 86-1719

DELAWARE LAW SCHOOL OF WIDENER UNIVERSITY, etc.,
Appellees in No. 86-5846

Before: GIBBONS, Chief Judge, HIGGINBOTHAM and SLOVITER, Circuit Judges.

ORDER

It is ORDERED that the motion for panel rehearing of the dismissal in No. 86-5846 is denied. The dismissal of this action for lack of jurisdiction is without prejudice to appellant's right to file a timely notice of appeal after the district court disposes of the claims against the remaining defendants who were not covered in the district court's prior orders.

BY THE COURT,

A. Leon Higginbotham
Circuit Judge

DATED: MAR 24 1987

Ex-1a 48a

James L. Martin
912 McCabe Ave.
Wilm., DE 19802
(302) 652-3957

March 25, 1987

Honorable Joseph J. Farnan, Jr.
US District Court
844 King St.
Wilm., DE 19801

Honorable Daniel H. Huyett, 3rd
US District Court
12614 US Courthouse
Phila., PA 19106-1797

RE: Martin v. DLS, et al., D.C. No. 85-53 (JJF), C.A. No. 86-5846
Martin v. PA Board of Law Examiners, et al., D.C. No. 86-1363, C.A. No. 86-1719

Dear Judges Farnan and Huyett:

On 1-5-87, the Court of Appeals granted my Motion to Consolidate these two appeals for "briefing and disposition." The attached Order was just issued yesterday. Some of the defendants were not covered in the orders issued in the trial courts to date, according to the March 24, 1987 ruling. Because the dismissal of my appeal for lack of jurisdiction was denied without prejudice to file for appellate review after "the district court disposes of the claims against the remaining defendants who were not covered in the district court's prior orders," I request either entry of a final judgment pursuant to Rule 54(b) or, preferably, final judgment as to all remaining claims pertaining to all remaining parties in both of these consolidated cases.

Sincerely,
James L. Martin
James L. Martin

cc: Somers Price, Esq.
Gwen Mosley, Esq.
David Weyl, Esq.
Robert B. Young, Esq.
Anne L. Nacsi, Esq.
Stuart B. Young, Esq.
Nancy Gilberg, Esq.
Joseph McNulty, Jr., Esq.
Melinda Shoop, Esq.
Timothy Sheffey, Esq.

Ex-2a 49a

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 86-1719 and 86-5846

JAMES L. MARTIN,
Appellant

v.

PA. BOARD OF LAW EXAMINERS, et al.,
Appellees in No. 86-1719

DELAWARE LAW SCHOOL OF WIDENER UNIVERSITY, etc.,
Appellees in No. 86-5846

Before: GIBBONS, Chief Judge, HIGGINBOTHAM and SLOVITER, Circuit Judges.

ORDER

It is ORDERED that this Court's order of March 24, 1987, is amended as follows:

It is ORDERED that the motion for panel rehearing of the dismissal of the appeals in Nos. 86-1719 and 86-5846 is denied. The dismissal of the appeal in No. 86-5846 for lack of jurisdiction is without prejudice to appellant's right to file a timely notice of appeal after the district court disposes of the claims against the remaining defendants who were not coverd in the district court's prior orders.

BY THE COURT,

A. Leon Higginbotham
Circuit Judge

DATED: APR 22 1987

Ex-3a. 50a

SUPREME COURT OF THE UNITED STATES

JAMES L. MARTIN, petitioner : No. 91-_____

v.

HON. CLARKSON S. FISHER,
respondent

Certificate of Service

I, James L. Martin, hereby certify that I served a true and correct copy of the Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit by first-class, postage-prepaid mail this 16th day of September 1991 on counsel for the respondents who appeared and on respondent Judge Clarkson Fisher, addressed as follows:

Irene Dowdy, Asst. US Atty; US DOJ; 402 E. State St.; Rm 502; Trenton, NJ 08608;

Hon. Clarkson S. Fisher: US District Court, NJ; Rm 235 US Courthouse; 402 E. State St.; Trenton, NJ 08605

BY: James L. Martin
James L. Martin; 912 McCabe Ave.; Wilmington, DE 19802; (302) 652-3957

ORIGINAL

SUPREME COURT OF THE UNITED STATES

JAMES L. MARTIN, petitioner : No.91-5852

v.

JULIE KNOX, HON. CLARKSON S. FISHER, et. al., respondents

Petitioner's Rule 15.7 Supplemental Brief

According to Rule 15.7, "[a]ny party may file a supplemental brief at any time while a petition for a writ of certiorari is pending calling attention to . . . intervening matter not available at the time of the party's last filing." Since I prepared the Petition for a Writ of Certiorari on 9-14-91, respondent Judge Clarkson S. Fisher granted my petition for a writ of mandamus directed against him in a closely related case, at No. 91-3206, which is pending in the NJ Federal District Court. A copy of the Order of Recusal, dated 9-16-91, is attached. Because the issues overlap, and because the evidence in support of the recusal in No. 91-3206, which was granted, is identical to the evidence adduced in support of the recusal motion in the case sub judice, issue C in this petition may be viewed as moot, and issue D may be viewed as conceded, in view of the recusal order attached.

Respectfully submitted,

DATED: November 4, 1991 James L. Martin

James L. Martin, 912 McCabe Ave.; Wilmington, DE 19802 (302) 652-3957

ORIGINAL FILED
SEP 16 1991
WILLIAM T. WALSH, CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JAMES L. MARTIN,

Plaintiff, : Civil No. 91-3206 (CSF)

v. : ORDER OF RECUSAL

JOHN J. FRANCIS, JR., et al., :

Defendants. :

ENTERED
on THE DOCKET
on Sep. 16 1991
WILLIAM T. WALSH, CLERK
By (Deputy Clerk)

It appearing that plaintiff herein, James L. Martin, filed a petition for a writ of mandamus with the United States Court of Appeals for the Third Circuit seeking my recusal from hearing the matter entitled Martin v. Knox, Civil Action No. 91-1145, and related cases and all cases related to Martin v. Townsend, et al., Civil Action No. 90-2616, aff'd, No. 88-5862 (3d Cir. April 20, 1989), which petition was denied by the court of appeals on September 6, 1991; and having, in my discretion, determined that my impartiality might reasonably be questioned because I was named nominal respondent in the mandamus petition, see 28 U.S.C. § 455; and good cause appearing,

IT IS on this 16th day of September, 1991,

ORDERED that I hereby recuse myself from hearing the within matter; and it is further

ORDERED that the Clerk submit the within matter to the Chief Judge for reassignment.

CLARKSON S. FISHER
United States District Judge

SUPREME COURT OF THE UNITED STATES

JAMES L. MARTIN, petitioner : No. 91-5852

v.

HON. CLARKSON S. FISHER,
respondent

Certificate of Service

I, James L. Martin, hereby certify that I served a true and correct copy of the **Petitioner's Rule 15.7 Supplemental Brief** by first-class, postage-prepaid mail this 5th day of September 1991 on counsel for the respondents who appeared and on respondent Judge Clarkson Fisher, addressed as follows:

Irene Dowdy, Asst. US Atty; US DOJ; 402 E. State St.; Rm 502; Trenton, NJ 08608;

Hon. Clarkson S. Fisher: US District Court, NJ; Rm 235 US Courthouse; 402 E. State St.; Trenton, NJ 08605

BY: James L. Martin

James L. Martin; 912 McCabe Ave.; Wilmington, DE 19802; (302) 652-3957

SUPREME COURT OF THE UNITED STATES

JAMES L. MARTIN *v.* JULIE KNOX ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 91-5852. Decided December 2, 1991

The petition for writ of certiorari is denied.

Opinion of JUSTICE STEVENS, with whom JUSTICE BLACKMUN joins, respecting the denial of the petition for writ of certiorari.

On November 4, 1991, the Court applied its recently amended Rule 39.8 to eight petitions filed by James L. Martin. Instead of simply denying those certiorari petitions on the ground that they lacked merit, the Court denied Martin leave to proceed *in forma pauperis* on the ground that the petitions were repetitive and frivolous. *Zatko* v. *California*, 502 U.S. __. I dissented from that action, in part, because drawing distinctions between those petitions that are frivolous and those that are merely meritless is a wasteful use of this Court's resources. The Court should simply deny certiorari once a determination is made that the petition lacks merit; there is no reason for the Court to make an additional inquiry into whether the petition is frivolous and thus the motion for leave to proceed *in forma pauperis* should be denied instead. The point is illustrated by the Court's correct disposition of this petition filed by Martin.

The petition is not frivolous because it raises a question on which the Courts of Appeals are in conflict. Compare *In re Beard*, 811 F. 2d 818, 827 (CA4 1987) (district judge's failure to disqualify himself can be reviewed by a petition for writ of mandamus); *Union Carbide Corp.* v. *U. S. Cutting Service, Inc.*, 782 F. 2d 710, 713 (CA7 1986) (same), with *Pittsburgh* v. *Simmons*, 729 F. 2d 953, 954 (CA3 1984) (judge's failure to recuse himself is reviewable only after

final judgment); *Cleveland* v. *Kurpansky*, 619 F. 2d 576, 578 (CA6) (same), cert. denied, 449 U. S. 834 (1980). Accordingly, it would be inappropriate to invoke Rule 39.8 and deny Martin's motion for leave to proceed *in forma pauperis*. I nevertheless agree that it is proper to deny the certiorari petition because it appears that the underlying recusal motion has no merit.